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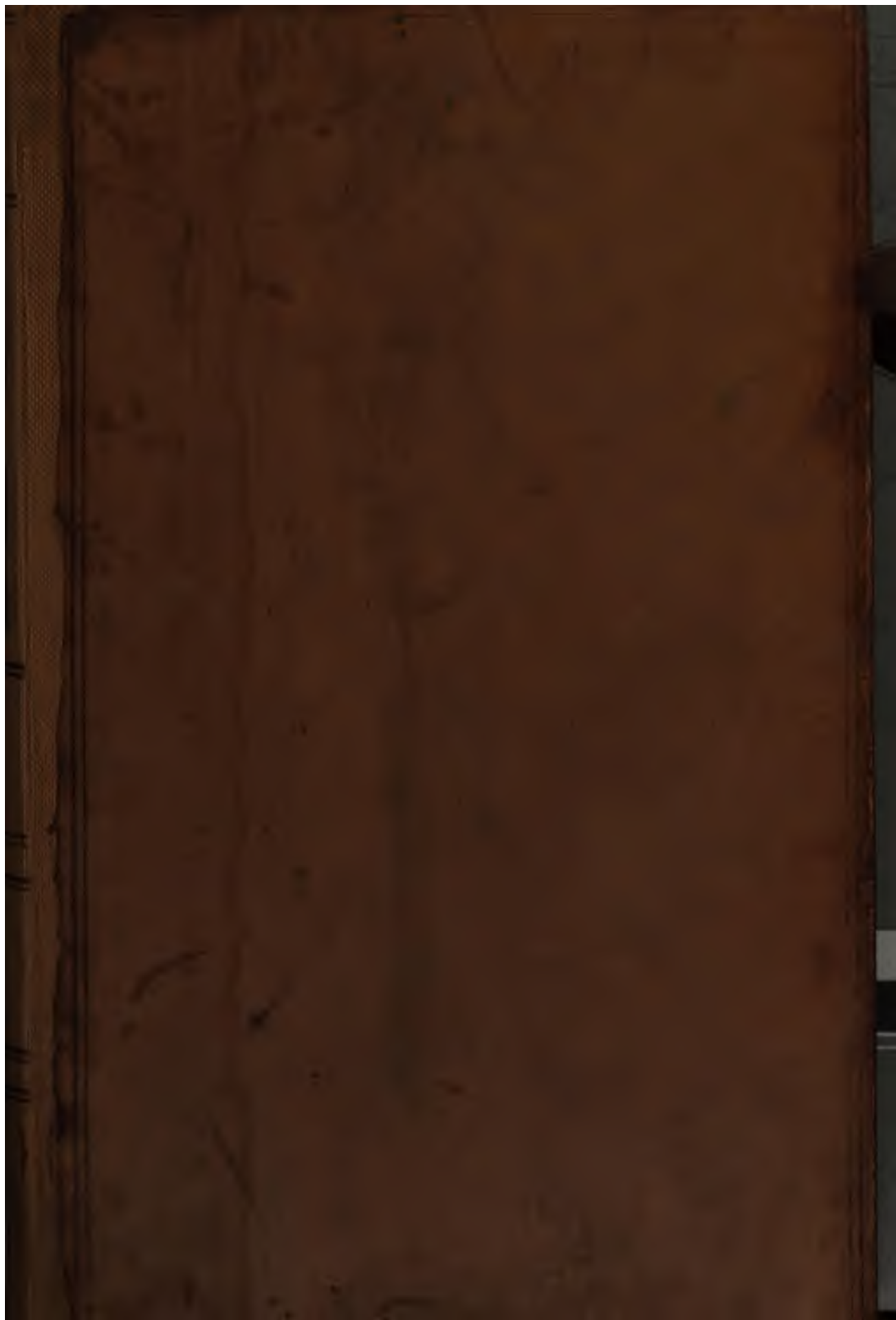
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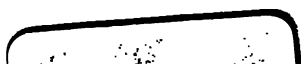


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A
COMPLETE SERIES
OF
RECEDENTS IN CONVEYANCING

AND OF
Common and Commercial Forms,
IN ALPHABETICAL ORDER,
ADAPTED TO THE PRESENT STATE OF THE LAW AND THE
PRACTICE OF CONVEYANCING;
WITH
COMPOS PREFACES, OBSERVATIONS, AND NOTES ON THE SEVERAL DEEDS.

TO WHICH ARE ADDED
THE LATEST REAL PROPERTY ACTS;
WITH NOTES
AND THE DECISIONS THEREON.

BY GEORGE CRABB, ESQ.
BARRISTER AT LAW.

Third Edition, Revised and greatly Enlarged.

IN TWO VOLUMES.

VOL. I.

=====

LONDON:
HENRY BUTTERWORTH, 7, FLEET STREET,
Law Bookseller and Publisher.

SOLD BY
HODGES AND SMITH, COLLEGE GREEN, DUBLIN.

1845.

LONDON :
PRINTED BY C. ROWORTH AND SONS, BELL YARD.
TEMPLE BAR.



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TO THE

THIRD EDITION.

IN preparing this Work for a third reprint, the Author has studiously endeavoured to carry out the design he originally formed, of giving all that may be wanted either as regards the theory or practice of Conveyancing. With this view considerable additions have been made to the Prefatory matter, as also to the number and variety of the Precedents and Common Forms, besides four new titles on Auctions, Bills of Exchange, Conveyances, and Deeds.

To the list of Statutes, abstracts of which are given in the Appendix, the Property Transfer Act, 7 & 8 Vict. c. 76, which was passed too late to be brought under the proper titles, has been added, with ample Notes.

It is therefore presumed that, after a careful revisal of the whole, and with all these additions, the Work will have acquired fresh claims to the approbation of the Profession.

16, SOUTHAMPTON BUILDINGS, CHANCERY LANE,
November, 1844.

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Definition and use of an abstract.

SECT. 1. When property, not passing by mere delivery, but held by a title, depending on documentary evidence, is to be sold, an abstract of the documents, commonly called an abstract of title, is now furnished by the vendor's solicitor.

Delivery of the deeds.

2. Formerly it seems to have been the practice for the vendor's solicitor to deliver the deeds themselves to the purchaser's solicitor, by whom the abstract was prepared, *Temple v. Brown*, 6 Taunt. 60; but it has since been held in several cases, that the mere delivery of the deeds is not sufficient, and the purchaser may now require to have an abstract also, *Horne v. Wingfield*, 3 Scott, N. R. 340; *Morris v. Kearsley*, 1 Y. & Coll. 139.

Not a substitute for the abstract.

Purchaser's right to a title.

3. The right of a purchaser to a good title does not rest in contract, but is implied by law, *Souter v. Drake*, 5 B. & Ad. 992; and a purchaser is not bound to accept a doubtful title, *Abel v. Heathcote*, 2 Ves. jun. 98; *Cane v. Baldwin*, 1 Stark. 65; yet a vendor may stipulate as a condition that the purchaser shall take such title as he has to give, *Wilmot v. Wilkinson*, 6 B. & C. 506; but the terms of the stipulation must be express and unambiguous, in order to release the vendor from his obligation, *Freme v. Wright*, 4 Madd. 364.

Production of documents by vendor.

4. A vendor is also bound to produce all documents necessary to verify the title; and if he wish to relieve himself from the necessity

of the said lands which descended to C. D." 1 Prest. Ab. 36—40; Bythw. Noy, 156.

4. Contents of the abstract.

12. Abstracts ought to contain all the material parts of every instrument, varying according to the nature of the instrument to be abstracted, whether it be a deed, record, Act of Parliament, fiat of bankruptcy, or will.

Deeds in general.

13. Abstracts of deeds generally should contain, first, the Date; secondly, the Names of the parties, their places of residence, and their character as heirs, executors, and the like; thirdly, Recitals, their substance or purpose; fourthly, the Witnessing Part, including the Consideration, which ought, particularly in annuity deeds, to be set out fully, as also the Receipt Clause, Operative Words, and Parcels, to be given fully; fifthly, the *Habendum*, including all uses, trusts, and powers, *verbatim*, also conditions, provisoes, and covenants, with exceptions as to incumbrances; sixthly, the Execution, Attestation, and Receipt indorsed.

Particular deeds.

Appointment.

14. Abstracts of particular deeds must contain additional particulars. In the abstract of an Appointment should be set out the power out of which it arises, also the power of revocation, if there be one; also the execution and attestation, very accurately.

Exchange.

The abstract of an Exchange ought to contain the eviction clause, and the powers and saving clause given fully.

Bargain and sale.

The abstract of a Bargain and Sale must state whether by indenture or deed poll, and the consideration must be set out very carefully as also the time of inrolment.

Award.

The abstract of an Award under an Inclosure Act should be preceded by showing the title to the lands in respect of which the allotment was made; the authority of the commissioners, "By virtue of an Act passed &c., by the award bearing date &c., was allotted all that &c.;" and, lastly, the inrolment of the award.

Feoffment.

An abstract of a Feoffment ought to state grant of title deeds, if any, warranty of title, and indorsement of livery of seisin.

In the abstract of a Lease, the time of its commencement and the covenants should be stated accurately; and if it be an underlease, the original lease and all underleases should be given, 1 Prest. Ab. 11; Bythw. Noy, 157.

Acts of Parliament.

15. An abstract of an Act of Parliament, otherwise called an "Estate Act," should state the session when it passed, and the day when it received the Royal assent, the title of the Act, the enacting clause, indemnity to purchasers and saving clause. When any local Inclosure Act is to be abstracted, it ought to show any variations from the provisions of the general Act, 1 Prest. Ab. 163.

renders made to the use of the will, and whether made generally or specially. The will, if any made in pursuance of the surrender, should also be given, 1 Prest. Ab. 202.

Delivery of the abstract.

22. In most contracts for the sale of estates a day is fixed, on which the vendor should deliver the abstract of title, and at law the contract may be avoided by the purchaser in case of failure on the part of the vendor, *Berry v. Young*, 2 Esp. 640; *St. Alban's (Duke) v. Shore*, 1 H. Bl. 280; but in equity this rule is not so strictly adhered to, *Wynn v. Morgan*, 7 Ves. 202; 1 Sugd. V. & P. 10th ed. 410 *et seq.*; 2 Dixon on Title Deeds, 452.

Comparing the abstract with the title-deeds.

23. On the delivery of the abstract by the vendor's solicitor, the duty devolves on the solicitor for the purchaser to compare the abstract with the title-deeds; and if the latter wish to relieve himself from all responsibility, he will lay the whole matter before counsel; for it has been decided that if he withhold any deed which may be found to affect the title, he does so at his peril, *Ireson v. Pearman*, 3 B. & C. 813; S. C. 5 D. & R. 690.

PERUSING THE ABSTRACT.

What comprehended under the perusal of the abstract.

24. The perusal of the abstract is to be considered as it relates to—
1. The *commencement* of the abstract. 2. The contents of the abstract. 3. The *assumptions* of the abstract, or evidences verifying the same.

1. Commencement of the abstract.

25. The conveyancer has in the very first instance to consider whether the abstract is carried back sufficiently far so as to enable him to advise upon the title; and where it commences with a deed depending for its validity upon a prior deed, he will rarely be satisfied without either seeing or being made acquainted with the contents of such deed; as where a settlement is made in pursuance of articles, he will wish to have an opportunity of inspecting the articles, or where there is an appointment in pursuance of a power, to see the deed creating the power; so where an estate tail is created, the abstract ought to contain a history of its creation; so in abstracting title deeds relating to terms for years, the deed creating the term should of course be the first in the abstract. So for the like reason, when any part of the *history* is to the use or upon the trusts of a former deed, or where the parcels are described only by reference to some prior conveyance, in all such cases the prior deeds, whatever be the date of them, must appear in the abstract; and where the origin of the title is a grant from the Crown, the grant should be abstracted, however ancient; may be in order to show that there is no remainder or

scription and Modus Decimandi Acts; and by the 3 & 4 W. 4, c. 74, remainders and reversions in the Crown are not to be affected by the provisions for barring entails. The principal statutes, however, directly limiting the claims of the Crown, are the 21 J. 1, c. 2, and 9 G. 3, c. 16 (see Dig. and Ind. p. i. tit. POSSESSION), which restricts the right of bringing actions for the recovery of lands to the period of sixty years; but this latter statute has been held not to give a title, only to take away the right from the Crown to bring an action, *Goodtitle v. Baldwin*, 11 East, 495.

2. Contents of the abstract.

31. The contents of the abstract, the heads of which have been before enumerated, may be said to comprehend the whole learning of the law of real and personal property, to which the conveyancer must occasionally have recourse in performing the office of perusing abstracts. To enter into details is not within the scope of a preface, but the following outline is intended to direct his attention to the most important points which may demand investigation.

Recitals.

32. In considering the parts of deeds, the recitals are the first in order which claim attention, they being evidence against the parties, *Doe v. Rogers*, 3 Ad. & Ell. 513; and as against them, they may be relied on as estoppels, *Doe v. Dodd*, 2 Nev. & Mann. 45; S. C. 5 Scott, 35. So where a recital shews the objects of the parties to the deed, it is necessary to see that it does not vary from the operative part, or it will vitiate the deed itself.

Consideration.

33. The next thing is the consideration, the nature of which, and that it has been fully and properly paid, ought to be duly ascertained and set forth, particularly in annuity deeds, where a failure in these matters will vacate the deed (see Dig. p. ii. tit. ANNUITY). So where the consideration is to be paid in a particular manner, in execution of a power or performance of a trust, &c., it is of importance to know that the consideration money has been paid to the parties competent to give a discharge, and exonerate the lands from the incumbrance.

Operative words.

34. Formerly particular words were necessary in the granting part of a deed, but it is now the practice of the courts, both of law and equity, to give effect to deeds in some way or other, though not according to their literal construction; but care must be taken that the words of the grant proceed from parties competent to do what they profess to do, as where a fee is to be granted that the grant is not made by a tenant for life, unless it be made under the provisions of 11 G. 4 & 1 W. 4, cc. 47, 60 (see Appendix, Nos. II. and IV.); and this will lead to the consideration of disabilities of different kinds, as coverture, infancy, and lunacy; and how far they are affected by the 11 G. 4 & 1 W. 4, cc. 47, 60, 65 (see Appendix, No. II., IV., V.);

be good. 2. The second rule as to the *habendum* is, that, if the grant be of a freehold interest, the *habendum* must be from the time of the execution of the grant, and not at a future time; therefore in the grant of an estate to a man and his heirs, the *habendum* must not be from "Michaelmas day next."

Limitations.

38. The limitations which immediately follow the *habendum* serve to declare for whose use it is intended that the grantee should hold the estate; and herein it will be necessary to distinguish whether it be to the use of the grantee himself or to some other person or persons; and herein of reversions and remainders, and how far they are affected by the provisions of the new Statute of Limitations (see Appendix, No. VIII.); and herein also of uses and trusts at common law and by statute (see Dig. p. iii. tit. **USES AND TRUSTS**). As limitations also frequently contain powers and trusts of sale, or of exchange and the like, it will be necessary to examine them minutely, as the validity of the title derived under them rests essentially upon the particular mode of their execution; so where there is a power or trust to sell, the clause (if there be any) exonerating the purchaser from seeing to the application of the purchase-money, by declaring the receipt of the trustee to be a sufficient discharge, ought to be particularly noticed.

Trusts of accumulation.

39. Under this head it will also be proper to consider trusts for accumulation at common law and by statute, see 39 & 40 G. 3, c. 98, (Dig. p. iii. tit. **WILLS**); and herewith is connected the doctrine of executory devises and contingent remainders.

Executory devises, &c.

Conditions.

40. Next to limitations are conditions and provisoes, in respect of which it is necessary to distinguish between conditions precedent, on which estates are sometimes made to commence, and conditions subsequent, which serve to defeat an estate. In the former case care must be taken to see that the condition, or, more properly speaking, the contingency has happened according to the construction of the words; and, in respect to the latter, it must be seen that the condition is not impossible, insensible, or *malum in se*. Before the 32 H. 8, c. 34, (see Dig. p. iii. tit. **LEASES**), such a condition could be reserved only to the grantor or his heirs, but by that Act an assignee may take advantage of every condition. As to the time of limitation for bringing an action in case of a condition broken, see 3 & 4 W. 4, c. 27, ss. 3, 4, (Appendix, No. VIII.)

Reddendum.

41. The *reddendum* (where there is any) may either precede or follow the limitations. Under this head the conveyancer is led to the consideration of rents, as to the mode of reservation, their dif-

ferent kinds, their recovery and apportionment, &c., and herein also of the statutory provisions on this subject (for which see Dig. p. ii. tit. APPORTIONMENT, DISTRESS, LANDLORD AND TENANT).

42. Where the covenants for title vary from the usual form, the conveyancer will desire to see the exact manner in which they are framed, in order that he may judge of their legal effect, particularly when there are any exceptions, as to the covenant for quiet enjoyment, excepting a right of way, of fishing, sporting, and the like; so if there be a covenant for the production of title-deeds, it must appear in the abstract, that he may know what title-deeds ought to accompany the title.

Covenants.

43. Where a deed is to be executed by more than one party, care must be taken to see that it is executed by all; and if it is to be executed in a particular manner, as in pursuance of a power, the conveyancer will require to see that all solemnities have been duly observed, particularly as regards attestation, see *Hawkins v. Kemp*, 3 East, 410; *M^cQueen v. Farquhar*, 11 Ves. 467; *Wright v. Wankeford*, 17 Ves. 454; *Doe v. Peach*, 2 M. & S. 276; *Doe v. Pope*, 2 Marsh. 102.

Execution of deed.

Attestation.

44. As the validity of deeds also depends upon their being enrolled or registered according to different Acts, this will demand no less care and attention than their execution (see Dig. p. iii. tit. INROLMENT).

Inrolment.

45. Besides what relates to deeds in general, every particular assurance has some points that require to be investigated; as if it be a feoffment, whether there has been livery of seisin; and if it be made by attorney, whether the attorney is duly authorized in writing; and also, whether the feoffor be an infant; and if made before 1834, whether there is a clause of warranty, see 3 & 4 W. 4, c. 27, s. 39, abolishing warranty. If it be an exchange, whether it be a common law exchange, having the word "exchange" among the operative words, and a consequent implied warranty; and whether the title to the lands received in exchange, as well as that of the lands given in the exchange, be duly set forth. If an allotment or exchange under an Inclosure Act or other Act of Parliament, it is necessary to ascertain whether it has the provision giving to the lands received in exchange the precise title which affected the property in lieu of which the allotment or exchange was made, see also as to exchanges in common fields, 6 & 7 W. 4, c. 115. If it be an award under an Inclosure Act it is necessary to ascertain the time of its inrolment, and whether it falls within the provisions of the 3 & 4

Requisites of particular deeds.
Feoffment.

Exchange.

Allotment, &c.
under Inclosure Acts.

- Partition. W. 4, c. 87, No. XV. If there is a partition between coparceners, an abstract of the title of each parcener must be made, and the like when under the Land-tax Acts the land-tax has been redeemed on different lands held on different tenures. If the deed be a lease and release, reference must be had to the lease for a year, but see 4 & 5 V. c. 21, which has rendered the lease in this assurance unnecessary for the future.
- Lease and release.
- Leaseholds. 46. Where the abstract relates to leaseholds it is now settled both at law and in equity, although long questioned, that, if the seller have not protected himself by express stipulation, the purchaser of a leasehold may require to have the title of the original lessor as well as that of the lessee; so where there is notice of any term, it is necessary to ascertain the nature of the covenants, and whether they run with the land or otherwise; and where there is an outstanding term, whether it has been assigned to attend the inheritance; and where it is a renewable lease, whether the former lease has been surrendered, and herein of the learning of surrender and merger; so where any lease is executed by tenant in tail, by husband and wife in right of the wife, by bishops in right of their churches, or by ecclesiastical corporations, it will be necessary to ascertain that they have been made according to the provisions of the enabling and disabling statutes (see Dig. p. iii. tit. LEASES); so where the vendor of a leasehold is a legatee, it must be shown that the executors have given their assent to the legacy; so where a leasehold is sold subject to an apportioned rent, it must be made to appear that the apportionment has been duly made.
- Fines and recoveries. 47. As to fines, the points to be considered are whether the conusor is competent to levy the fine, and the conusee is capable of taking by a fine; and where the fine has been levied by a married woman before 1834, it must be made to appear that she is not within the provisions of 11 H. 7, c. 20; also, whether the parcels are the proper subject of a fine, and the proper solemnities have been observed so as to render the fine complete. As to a common recovery, the points of consideration are—1. The writ of entry on which the recovery has been suffered; 2. The writ to be brought against the tenant of the immediate freehold, called the *tenant to the præcipe*; and, 3. Whether the proper party is vouched, and when the voucher is double, whether he vouched over. The law of fines and recoveries, which, for some time to come, will be very important in the deduction of titles, must now be considered, not only with reference to titles prior to the 3 & 4 W. 4, c. 74, but also in reference to titles

will find many things wanting to enable him to deduce a good title. Where a title depends on a fine and recovery, or other assurance upon record, office copies of the records thereof will be required. Of the facts of marriages, births, or deaths, a certificate under the hand of the officiating minister, or of the registrar under 6 & 7 W. 4, c. 86, ss. 34, 35, or an extract from the registry, will be called for; or in the case of a seaman in her Majesty's service, entries in the books of the navy office will be deemed sufficient. Of the legitimacy of a child, certificate of the marriage of the parents, and proof of consent if they were infants, must be adduced; so of failure of issue, an affidavit by some person acquainted with the family has been deemed sufficient, *Benning v. Griffiths*, 15 E. 293; or an inquisition of an escheat, *Faulkner v. Silk*, 3 Campb. 1; so of executorship or administratorship, probate must be produced; and of intestacy, letters of administration. Of descents, a pedigree verified by such evidence as would satisfy a jury of honourable men would be deemed satisfactory; and to this end declarations in families, tradition, common reputation, descriptions on monuments, entries in Bibles, engravings on old rings, and other evidences of the like kind, which are free from all suspicion, have been admitted, *Whitelock v. Baker*, 13 Ves. 511. So recitals in deeds will be admitted as evidence of lost deeds; so even private written documents, as entries in a deceased attorney's book of charges for executing a deed, *Skipwith v. Shirley*, 11 Ves. 64; see further Preston on Abstracts, *passim*; 1 Barton's Dissertations on Conveyancing, Diss. I.; 1 Barton, jun. Concise Precedents, 1 *et seq.*; 2 Sugd. V. & P. 13 *et seq.*; 2 Dixon on Title Deeds, chap. xc.; Bythw. & Jarm. Conv. by Sweet, 3d edit. tit. Abstracts.

No. I.

*Abstract of the Title of R. S. to the Fee-simple of a Farm situate
at , in the Parish of , in the County of .*

Feoffment.

1st Feb. *By Indenture* of Feoffment between W. B. of &c.
1776. of the one part, and J. G. of &c. of the other
 part,
 It is witnessed that, in consideration of the sum of
 £ to the said W. B. paid by the said J. G.
 the said W. B.

 No. I.

and affection, and of 10s. to the said J. G. paid by the said R. K. and W. M., the said J. G.

Did grant, bargain, sell and release unto the said R. K. and W. M. (in their actual possession &c.) and to their heirs

All that farm (f) &c.

To hold unto the said R. K. and W. M., their heirs and assigns, to the uses, and upon and for the trusts, intents and purposes hereinafter expressed; that is to say,

To the use of the said J. G. until the said intended marriage shall be had and solemnized; and from and after the solemnization thereof

To the use of the said J. G., son of the said J. G., during the term of his natural life; and from and after his decease

To the use of the said A. M. (if she should happen to survive the said J. G.) during the term of her natural life; and from and after the decease of the said J. G. and A. M.

To the use of all and every the child and children of the said intended marriage as the said J. G. and A. M. or the survivors of them, by any deed under his or her hand and seal, attested by two or more credible witnesses, should direct or appoint; and in default of issue

To the use of such person or persons as the said J. G. by any deed &c. should appoint; and in default of appointment

To the use of the right heirs of the said J. G.

Power to raise portions by mortgage or sale, to grant leases, exchange lands, appoint new trustees, &c.

Indemnity to purchasers, &c. also to trustees.

Covenant that the said J. G. had power to convey

For quiet enjoyment,

Free from incumbrances,

And for further assurance.

(f) If there be no variation in the parcels, they need not be described again, but may be referred to.

*To the use (i) of M. P., the testator's wife, for life,
with*

remainder

*To the use of J. P. and N. H., and their heirs,
during the natural life of the said M. P., to
preserve contingent remainders;*

remainder

To the use of testator's son, N. P., for life;

remainder

*To the use of the said J. P. and N. H., and their
heirs, during the life of the said N. P., &c.;*

remainder

*To the use of the first and other sons of the said
N. P., the younger, severally in tail male;*

remainder

*To the use of M. P. and E. P., the two daughters
of the said N. P., in tail general;*

remainder

To the testator's right heirs;

*Power to testator's said son, when in possession
of the said estate, to raise portions for younger
children, and grant leases;*

Testator appointed his wife, M. P., sole executrix.

3d May, 1810. *Proved in the Prerogative Court of the Arch-
bishop of Canterbury by M. P.*

Registered, Book C., No. 400.

11th June, 1814. *Testator died without having revoked his will.*

1st Aug. 1820. *N. P., only son of the said N. P., died, leaving no
issue.*

2d Dec. 1820. *M. P., wife of the said N. P., the elder, died.*

10th May, 1822. *M. P., the eldest daughter of the said N. P. and
M. P., died unmarried.*

20th Feb., 1825. *E. P., the second daughter of the said N. P.
and M. P., died unmarried [state certificates of
burials].*

(i) As to the limitations in a deed, see *ante*, s. 38.

No. I.

		And quiet enjoyment. Duly executed and attested.
Settlement.	9th Sept. 1827.	<i>By Indentures</i> of lease and release between R. S. of &c., of the first part, the said A. P., of the second part, R. P. and J. W., of the third part <i>Reciting</i> [recite treaty of marriage between R. S. and A. P. as before]; <i>It is witnessed</i> [abstract of settlement as before]; <i>Covenants</i> [as before], also a covenant on the part of R. S. and A. P. to levy a fine (l) of the premises hereinbefore described, and it was thereby agreed that the said fine should enure to the use of such person or persons, and for such estates, uses, and interests, as the said R. S. and A. S. should by deed or will direct and appoint.
Fine.	14th Nov. 1838. Mich.Term, 7 & 8 Geo. 4.	<i>Indenture</i> of fine levied in the Court of in pursuance of the covenant in the last abstracted indenture of release wherein J. B. was plaintiff, and R. S. and A. S. his wife, late A. P. deforcians. Of the said farm &c. [as in the chirograph of indenture of fine]. Acknowledgment by the said A. S. was taken on the and the proclamations as follow [state date of proclamations].

No. II.

Abstract of the Title of J. F. to the Copyhold(m) Messuage situated at .

Admittance.	7th April, 1776.	At a court holden for the manor of J. B. was admitted to all that messuage &c. situate <i>To hold</i> to him his heirs and assigns for ever of the lord of the said manor, at the will of the lord, according to the custom of the said manor, by the rent.
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(l) As to fine levied by a married woman before 1834, see *ante*, s. 47.

(m) As to the incidents to lands of copyhold tenure, see s. 50.

No. II.		and purposes mentioned in the said will of the said J. B., if any such did then exist.
Surrender.	2nd Nov. 1825.	<p>The said W. J. having sold the said copyhold premises to T. V.</p> <p>At a court holden for the manor of <i>Did</i>, in consideration of the sum of £ paid to him by the said T. V. for the absolute purchase of the said premises, surrender by the rod into the hands of the lord of the said manor, by his steward, according to the custom,</p> <p><i>All that</i> the before-mentioned copyhold messuage &c., and the reversion &c.</p> <p><i>To the use</i> of the said T. V., his heirs and assigns for ever.</p> <p>And the said T. V. being present was admitted and seisin delivered to him.</p>
Enfranchise- ment.	12th & 13th Nov. 1825.	<p><i>By Indentures</i>, between W. T., lord of the manor of of the one part, and the said T. V. of the other part;</p> <p><i>Reciting</i> that the said W. T. was seised to him and his heirs of the said manor for an estate of inheritance in fee simple in possession, free from all incumbrances whatsoever;</p> <p><i>And reciting</i> that the wife of the said W. T. was not entitled to dower in or out of the said hereditaments, the same having been barred by a settlement previously to their marriage;</p> <p><i>And reciting</i> admittance of the said T. V.;</p> <p><i>And reciting</i> that it had been agreed between the said W. T. and T. V. that the said copyhold premises should be enfranchised;</p> <p><i>It is witnessed</i> that in consideration of the sum of £ paid to the said W. T. by the said T. V., he the said W. T.</p> <p><i>Did</i> bargain, sell, release and enfranchise, all those &c.</p> <p><i>To hold</i> the same to his heirs and assigns for ever, freely and absolutely discharged by these presents from henceforth from all and all manner</p>

of yearly or other payments, rents &c., duly executed and attested. No. II.

And it is also witnessed that for the considerations aforesaid, and in order to preserve to the said T. V., his heirs and assigns, all such rights of common in, upon and over the said manor as he the said T. V. or any of his ancestors had heretofore enjoyed the same, belonging to the last abstracted hereditaments and premises, notwithstanding the enfranchisement of the same, he the said W. T.

Did grant and confirm unto the said T. V., his heirs and assigns for ever,

All such commonage and right or title of or to commonage, of what nature or kind soever, in, upon and over all or any of the wastes, commons or commonable lands of or belonging to the said manor as he said T. V. immediately previous to the execution of the now abstracting indenture, or any of his ancestors, had or enjoyed in respect of, or appurtenant to, all or any of the hereditaments and premises so enfranchised as aforesaid;

And all the freehold and inheritance of such commonable rights &c.

To hold to the said T. V., his heirs and assigns, in as ample and beneficial a manner, to all intents and purposes, as he the said T. V. or any of his ancestors had, or might have theretofore had, or enjoyed the same.

Covenant by the said W. T., for himself, his heirs, executors and administrators, with said T. V., his heirs and assigns,

That he was seised in fee,

Had full power to enfranchise,

For quiet enjoyment,

Free from incumbrances,

For further assurance, and to produce and shew, at the costs of the persons requiring

No. II.

the same, the following deeds, evidences and writings unto said T. V., his heirs and assigns, or to his or their counsel, attorney or agent in any court of law or equity, or upon any commission for the examination of witnesses, and upon every other reasonable occasion, and to give true, neat and attested copies, abstracts and extracts thereof; *And* in the mean time to preserve the same deeds &c., safe, undefaced and uncanceled, fire and other inevitable accidents excepted ⁽ⁿ⁾.

[Here transcribe the schedule of the deeds.]

Executed by said W. T., and duly attested.

Receipt for £ , endorsed, signed and witnessed.

Extent.	3rd June, 1830.	A writ of extent having issued on behalf of his Majesty against the said T. V., the said last-mentioned premises were extended under the same as the property of the said T. V.; and by indenture of bargain and sale duly inrolled in his Majesty's Court of Exchequer, the said last-mentioned premises were bargained, sold and conveyed by A. M., Esq., the deputy Remembrancer of the Court of Exchequer, to J. F.
Bargain and Sale.		

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No. III.

Abstract of the Title of P. S. to Leasehold(o) Grounds and Premises, situate at , of which a Bill for a Partition had been filed.

Lease.	1st June, 1780.	<i>By Indenture</i> of three parts between C. L., the receiver of the rents and profits of the real estates of J. D. of &c., appointed by the High Court of Chancery in a cause there depending, wherein W. M. of &c., devisee in fee of J. D., deceased,
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⁽ⁿ⁾ If it be necessary, add as follows :

" Declaration and agreement that nothing in the now abstracting indenture contained should be deemed to enfranchise any other parts of the copyhold hereditaments lying within the said manor."

^(o) As to what is incident to leaseholds, see s. 46.

the eldest son and heir, and one of the devisees of the first-named J. D., and also brother and heir devisee and executor of W. D., another of the sons of the said J. D. the elder, was plaintiff, and C. D., an infant, the heir-at-law of C. D., another of the sons and devisees of the said J. D. the elder, H. C. and N. N., the executors of the said C. D. the son, were defendants of the first part, the said W. M. of the second part, and R. O. of &c., builder, of the third part.

Reciting—That the said J. D. the son did in the year &c. exhibit his bill in the said Court, praying amongst other things that a partition might be had of his said father's real estates, and by a decree made in the said Court by the Master of the Rolls on &c., it was amongst other things declared that the said three children of the said J. D. the father and A. D. the mother then living, were entitled to the real estates under his will as joint tenants in equal shares, and a writ of partition was directed to divide the same accordingly.

That by an order of the said Court dated &c., reciting the said bill and decree, and that certain houses in it (part of the estate in question) were in a most ruinous condition, and that it would be for the benefit of the parties to have a receiver appointed and building leases granted for that part of the estates. And also reciting that the said J. D. the son survived the said W. D., and as his heir-at-law became entitled to his share of the said estates, and by his will devised all his estates to the said W. M., the plaintiff, and his heirs. And that the said C. D., the defendant, was the heir-at-law of the said C. D. (the said J. W. &c., the three children of the said J. D. the father, living at the time of the pronouncing of the said decree, amongst whom it was directed that the said estates should be divided). And that by an order of the said Court,

No. III.

dated it had been referred to one of the Masters of the said Court to appoint a receiver of the rents and profits of the said estates, with liberty to let and set the estates, with the approbation of the said Master. And that the said Master had appointed the said C. L. receiver thereof.

It was ordered that the said Master's report should be confirmed, and that the said C. L. should be at liberty to grant leases of the premises situated at

That the said C. L. afterwards laid before the Master a proposal of the said R. O. to take a lease or leases of the premises before mentioned, for the purpose of building &c. [here set out the terms of the leases.]

That the said Master, by his report dated , did approve the said proposal.

And that the said R. O., in conformity to the said proposal, and to the Act of Parliament for the regulation of buildings there referred to, had erected, built, and covered in two substantial brick messuages or tenements upon part of the said piece of ground.

It is witnessed that as well in consideration of the charges and costs which the said R. O. had sustained and should or might sustain in completing the said two messuages or tenements, as also in consideration of the said yearly rents &c., he the said

Did, by virtue and in pursuance of the powers and authorities so given to him, and enabling him in that behalf, and by and with the approbation of the said Master, testified &c., demise and lease, and the said W. M. for the causes aforesaid

Did grant, demise, ratify and confirm unto the said R. O., his executors, administrators and assigns, *All that &c.*

To hold the same unto the said R. O., his executors &c., for the term of years, subject to a rent of £ for years, and during all the

residue of the said term to a rent of £ , No. III.
clear of all deductions.

Covenant(p) from R. O. to pay said rents, to repair &c.

Proviso(q) for re-entry on non-payment of rent, or non-performance of covenants.

Covenant by W. M. for quiet enjoyment on payment of rent and performance of covenants.

Executed by C. L. and W. M. and attested by two witnesses.

(Master's allocatur.)

2nd May, 1781. Registered Book B. No. 108.

3rd May, 1825. *By Indenture* of assignment between the said R. O. Mortgage.
of the one part, and D. N. of &c. of the other part,

Reciting the before-abstracted lease,

And reciting that the said D. N. had consented to lend the said R. O. the sum of £ on the security of the said premises.

It is witnessed that in consideration of the sum of £ to the said R. O. paid by the said D. N., he the said R. O.

Did grant, assign and set over unto the said D. N. All those messuages &c.

To hold the same unto the said D. N., his executors, administrators and assigns, from henceforth for all the remainder of the said term, subject nevertheless to a proviso for redemption as hereinafter mentioned.

Proviso for redemption(r) upon payment of the sum of £

Covenant by the said R. O. to pay the sum of £ with interest in manner therein-before mentioned.

Covenant from D. N. after default in payment to enter &c., receive the rents &c.

(p) As to the necessity of noticing covenants in leases, see *ante*, s. 46.

(q) As to the effect of conditions and provisos in deeds, see *ante*, s. 40.

(r) As to the redemption &c. of mortgages, see *ante*, s. 49.

No. III.

Covenant by R. O. that he hath good right to assign,

And for further assurance.

Covenant by D. N. for quiet enjoyment until default.

And for the causes aforesaid, and for the better securing the payment of the said sum of £ , and in consideration of 5s. to the said R. O. paid by the said D. N., he the said R. O. &c.

Did assign &c. unto the said D. N., his executors, &c., one instrument or policy of insurance &c.

To hold the same for the benefit of the said D. N., subject nevertheless to such redemption as herein-before mentioned. Executed by R. O. and D. N. Receipt indorsed and attested by two witnesses.

3rd May,
1825.

Register(s) Book, No. 220.

Assignment.

4th Nov.
1827.

By Indenture of assignment between the said R. O. of the first part, the said D. N. of the second part, and P. S. of &c. of the third part,

Reciting the before-abstracted indentures of lease and mortgage.

And further reciting that the said R. O. had on day of then last caused the said pieces of ground and messuages to be put up to sale by public auction, pursuant to public advertisement and printed particulars, at which auction the said P. S. was the highest bidder, and was accordingly declared the purchaser, in pursuance of the conditions of the said sale &c.

It is witnessed that in consideration of the sum of £ to the said D. N. at the request of the said R. O. testified &c., paid by the said P. S. in full satisfaction and discharge of all principal money and interest due to the said D. N. upon and by virtue of the said in part recited indenture

(s) As to the registry of deeds, see *ante*, s. 44.

No. III.

of mortgage, the receipt &c. And also in consideration of the sum of £ to the said R. O., the receipt of which sum of £ paid to the said D. N., as well as the payment of the sum of £ , making together the sum of £ , the said R. O. doth hereby acknowledge, he the said D. N., at the request and by the direction of the said R. O. testified &c., and also the said R. O., *Did* assign &c. unto the said P. S., his executors &c. *All those &c.*

To hold the same unto the said P. S., his executors &c., from thenceforth for all the residue of the said term of years, subject to the rents and covenants in the hereinbefore-abstracted indentures. *Covenant* by D. N. that he had done no act to incumber.

Covenant by R. O. that the lease was valid, that he had power to assign, for further assurance, and for quiet enjoyment.

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No. IV.

Abstract of a Grant of Lands (t) and Goods to Charitable Uses.

15th July, 1811. *By Indenture* of assignment of this date, between the Rev. J. P., rector of , of the one part, and the Master, Fellows, and Scholars of College, of the University of , of the other part,
Reciting that the said J. P. was desirous of augmenting the revenues of the said college (u),
And reciting that by an indenture of lease bearing date the day of , in the year ,

(t) This precedent serves to show a title in part good, and in part defective, under the Mortmain Act, 9 Geo. 2. See Dig. p. iii. tit. MORTMAIN; also *post*, note (y).

(u) Gifts to colleges in the two Universities of Oxford and Cambridge were excepted from the operation of the Act.

No. IV.

and made between the Dean &c. of the one part, and the said J. P. of the other part, the said Dean &c. demised and leased unto the said J. P. all that &c. *To hold* the same with the appurtenances unto the said J. P., his executors, administrators and assigns, for the term of years, to be computed from the day of then last, at the yearly rent of £ , to be paid quarterly on the days therein mentioned, with benefit of renewal,

It was witnessed that in consideration of the sum of 10s. paid by the said Master &c. to the said J. P., He the said J. P. did bargain, sell, assign, transfer, and set over

All that the said indenture of lease &c., and the premises thereby demised, with the appurtenances, *And* all the estate &c.

To hold unto the said Master &c. and their successors for the residue of the said term, with the benefit of renewal, subject to the payment of the rent and performance of the covenants in the said indenture, upon the trusts hereinafter expressed,

Upon trust to permit the rector of (x) to hold the same and receive the issues and profits thereof for his own use and benefit, he paying the reserved rent and the fines for renewal.

And it was further witnessed that for the consideration &c. *He* the said J. P. did bargain &c. to the said Master &c.

All and singular the household goods, furniture, [and plate and all other moveables (money excepted)] in and about his dwelling-house situate at and in

In trust for the sole use and benefit of the rector for the time being of the said

(x) The donor, in the case to which this precedent relates, was himself the rector of the benefice at the time of his making the gift, but this was held not to be a reservation in his own favour within the prohibitory clause of the Act, *Attorney-General v. Munby*, 1 Mer. 327.

- 18th July, 1811. Inrolled in Chancery.
- 4th Oct. 1811. *By Indenture* of assignment of this date between (same parties),
Reciting the above-abstracted indenture,
And further reciting that by indentures of lease and release bearing date respectively the day of and the day of , in the year , and made between J. G. of &c. of the one part, and the said J. P. of the other part; the said J. G. for the consideration of the sum of £ paid to him by the said J. P. did grant, release, and confirm unto the said J. P. and his heirs, *All &c.*, together with all [outhouses &c.]
To hold the same to the only proper use of the said J. P. and his heirs and assigns, subject nevertheless to a proviso for redemption.
It was witnessed that in consideration &c. [as before] the said J. P. did bargain &c. to the said Master &c. All and every the messuages &c., subject nevertheless to redemption, and the said sum of £ secured thereby, together with a bond as a further security for the repayment of the same,
In trust to receive the interest when due, and pay the same to the said rector of for the time being aforesaid, for his own use and benefit, and receive the said principal sum of £ when the same should become due and payable, and again to invest the same or suffer the same to remain so invested, in order that the interest might for ever be paid to and received by the said rector as aforesaid.
- 5th Oct. 1811. Inrolled in Chancery.
- 9th Nov. 1811. The said J. P. made his will of this date, whereby he did give, grant and devise to the said Master &c. *All that* the perpetual advowson, donation,

No. IV.

nomination, right of patronage and presentation of, in, and to the said rectory of , together with the rights, members and appurtenances thereunto belonging, subject nevertheless to the condition that the same should not be held by any college preacher, and that in all cases the Fellow presented thereto should vacate his Fellowship.

12th Feb. The said J. P. died (y).
1812.

ACCOUNTS.

No. V.

Allowance.

No. V.

Allowance of an Account stated.

Obs. This is not an acknowledgment of the receipt of the balance, and therefore does not require a receipt stamp, *Wellard v. Moss*, 1 Bing. 134; S. C. 7 Moore, 503. So for the same reason, an account current does not require a receipt stamp, *Wright v. Shawcross*, 2 B. & A. 502, n.; see further *Acquittance*.

We the above-named A. B. and C. D. having carefully examined and compared the above-mentioned account with the several vouchers do approve and allow of the same, and do admit that the balance of £ is a just and fair balance. As witness our hands this day of 18

Witness,

E. F.

A. B.

G.

C. D.

No. VI.

*Under 17 G. 3,
c. 53.*

No. VI.

Allowance of an Account stated by a Nominee appointed under the 17 G. 3, c. 53, for building or repairing a Parsonage.

Obs. This statement is required to be given under 17 G. 3, c. 53, and 21 G. 3, c. 86 (see Dig. p. ii. tit. BENEFICE,) by the nominee,

(y) In consequence of the death of the donor within the twelve months in which these gifts were made in favour of his successors as incumbents of his rectory, they were declared void under 9 Geo. 2, c. 36; see *ante*, note (x); but the devise of the advowson to the college was confirmed, *Attorney-General v. Munby*, *ub. sup.*

ACKNOWLEDGMENTS.

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and must contain an account of the monies advanced and paid by him for the building or repairing the parsonage-house and buildings belonging to the living, together with the bills of the several persons employed, which is to be allowed by the ordinary patron and incumbent.

No. VI.
*Allowance of
Accounts.*

We have examined, and do hereby approve and allow the above accounts. Given under our hands this day of

A. B. (*Ordinary.*)

C. D. (*Patron.*)

E. F. (*Incumbent.*)

ACKNOWLEDGMENTS.

Gen. Obs. Informal instruments serving as mere memoranda may, as a rule, be admitted in evidence, without any stamp. An agreement stamp is necessary only when a paper is evidence of an agreement directly, but not when it is used incidentally, *Wheldon v. Matthers*, 2 Chitt. 399. So an acknowledgment of having received money for another does not require a receipt stamp, see *Acquittance*.

Distinction between acknowledgments and agreements, or receipts.

No. VII.

Acknowledgment that an Agreement entered into by one was on behalf of another.

No. VII.
Agreement.

Obs. As to the effect of such instruments as the following, see *Gen. Obs. supra*.

I hereby acknowledge that an agreement entered into by me, bearing date and made &c., was entered into by me for and on behalf of C. D. A. B.

No. VIII.

Acknowledgment of having received a Bill of Exchange for a particular Purpose.

No. VIII.
Bill of Exchange.

Obs. This may be admitted in evidence without any stamp, *Langdon v. Wilson*, 2 Mann. & Ry. 10; see further, *Acquittance*.

I have received a bill of exchange, which I hold as your attorney, , to recover the value thereof from the parties, or
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No. VIII.
*Bill of Ex-
change.*

to make such arrangement for your benefit, as may appear to me in my professional character reasonable and proper.

A. B.



No. IX.
Debt.

No. IX.

Acknowledgment of a Debt, so as to take the Case out of the Statutes of Limitations.

Obs. By the 9th G. 4, c. 14, s. 1, no acknowledgment or promise by words only, in an action of debt, or on the case grounded on simple contract, will be sufficient evidence of a new or continuing contract, so as to take the case out of the Statute of Limitations, unless it be in writing, or there be part payment. The 3 & 4 W. 4, c. 42, s. 5, contains a similar provision in respect to debts on bonds, or other specialties. By the 3 & 4 W. 4, c. 27, s. 40, any person's right to money charged on land or any legacy may be kept on foot by a written acknowledgment duly delivered to the person interested, or his agent. Acknowledgments which the 9 G. 4 requires to be in writing are by s. 8 of the same act exempted from stamp duty. As to the effect of acknowledgments by parol before and since those Acts, see Dig. p. iii. tit. LIMITATIONS.

I do hereby acknowledge that the sum of £ , being part of the sum of £ , lent to me by C. D. of &c., is still owing and unpaid.

A. B.



No. X.
Debt, &c.

No. X.

Acknowledgment of a Debt or Legacy still due, to prevent its being barred by the 3 & 4 W. 4, c. 27, s. 40.

Obs. As to the effect of the provision in this section of the Act as compared with the 3 & 4 W. 4, c. 42, see Appendix, No. VIII.

I A. B. of &c. do hereby acknowledge that the sum of, £ , payable to C. D. (under or by virtue of the will of E. F., bearing date &c.) is still due and owing by me. Witness my hand this day of 18 .

A. B.



No. XIV.
Receipt of Writings.

No. XIV.

Acknowledgment of Writings received by a Mortgagee.

Received the day of 18 the several deeds papers and writings mentioned and particularised in the under-written schedule which I hby promise to deliver upon the receipt of £ this day lent and advanced by me to the under-mentioned (*mortgagor*) his hrs or ass to keep the same safe and uninjured [loss or damage by fire or or. inevitable accidents excepted] Witness &c. [see *ante*, No. X.] C. D.

A schedule of the deeds papers and writings relating to a certain messe &c. situate &c. the property of A. B. the mortgagor to C. D. for securing the repayment of the sum of £ and int. 17 & 18 May 18 . Indentures of lease and release of these dates the release made between &c.

No. XV.
*Title,
(Mortgagor.)*

No. XV.

Acknowledgment by Mortgagee in Possession of the Mortgagor's Title, so as to take the Case out of the Stat. 3 & 4 W. 4, c. 27.

Obs. By the 3 & 4 W. 4, c. 27, s. 28 (see Appendix, No. VIII.) a mortgagor's right to the equity of redemption may be kept on foot by a written acknowledgment given to him or his agent duly authorized.

I do hby acknge that the messes and premises, whereof I am now in receipt of the rents and profits, which are comprised in a certain deed of indre, by way of mortgage, bearing date &c., and made &c., do belong to the said (*mortgagor*), and on payment of the said sum of £ with interest within months from the day of shall be reconveyed to him.

(*Mortgagee.*)

No. XVI.
*Title,
(Person.)*

No. XVI.

Acknowledgment of a Person's Title to certain Land, so as to take the Case out of the Stat. 3 & 4 W. 4, c. 27.

Obs. By the 3 & 4 W. 4, c. 27, s. 14 (see Appendix, No. VIII.), when any acknowledgment of the title of the person intitled to any land or rent shall have been given to him or his agent, signed by the person in possession or in receipt of the rents and profits of such land,

No. XVIII.
Vendor.

London, the within-named (*vendor*) and M. (*wife*) his wife, and did then and there severally own and acknge the within-written indre to be their free and voluntary act and deed, and the sd M. being by me the sd Lord Mayor privately examined apart from her said husband did declare her free and voluntary consent to the sd deed, and that she exted the same without fear or force of her sd husband or any or. person, and that at the time she knew the same to be an absolute conveye of the este within mentd to the within-named (*purchaser*) and the sd (*vendor*) did also acknge the name (*his name*) subscribed to the receipt indorsed upon the sd indre to be his name and hand-writing, and that he had recd the conson money thin mentd. In Witness whof I the sd Lord Mayor

ACQUITTANCES.

- | | |
|---|-------------------------------------|
| 1. <i>Definition.</i> | 4. <i>Effect of an Acquittance.</i> |
| 2. <i>Acknowledgment not a Receipt.</i> | 5. <i>Effect of last Receipt.</i> |
| 3. <i>Form of a Receipt.</i> | 6. <i>Indorsement of Payment.</i> |

Definition.

Sect. 1. An acquittance signifies a release or discharge in writing of a sum of money or debt due. It must be on a stamp, the value of which must be according to the amount. A receipt in full of all demands requires a 10s. stamp. If it include a release, it must be on a deed stamp, (see *Release*).

Acknowledgment not a receipt.

2. A memorandum in these words, "Mr. T. has left in my hands £200," has been held not to require a receipt stamp, which is only necessary where the document has been given for or upon the payment of money, and in discharge of something already due, *Tomkins v. Ashby*, 6 B. & C. 541; see Dig. p. iii. tit. RECEIPTS.

Form of a receipt.

3. A receipt need be in no particular form to make it liable to a stamp. If a party on receiving payment writes the word "Settled," he is liable to the penalty for giving a receipt without a stamp, *Spawforth, q. t. v. Alexander*, 2 Esp. 261.

Effect of an acquittance.

4. An acquittance, or mere receipt without seal, is only evidence of satisfaction, and not conclusive against the party who signed it *Stratton v. Rastall*, T. R. 366. But when a man by deed acknowledges himself satisfied, it is a good plea in bar, without receiving anything, *Rountree v. Jacob*, 2 Taunt. 141; and a court of law can only avoid the deed by equitable interference, *Legh v. Legh*, 1 B. & P. 447; *Shaiiff v. Jackson*, 3 B. & C. 421. An acquittance, or re-

6.

Effect of last receipt.

Indorsement of payment.

No. XX.

Mortgage Money.

No. XXI.

Purchase Money.

£
1000

No. XXII.
Stock.

No. XXII.

Another, where the Consideration is Stock.

RECEIVED and accepted the day and yr first
within-written of and from the within-named (*pur-
chaser*) the transfer of the capital sum of £
reduced bank annuities being the conson within-
mentioned to be transferred to me. } £
Witness, &c. [see *ante*, No. XXI.] } Reduced
Annuities.



No. XXIII.
*Trustees,
(Vendors.)*

No. XXIII.

*Acquittance from Vendors, being Trustees under a Will, to
Purchasers in equal Moieties.*

Obs. If there are two releases, the receipt must refer to each.

We the within-named A. B. C. D. and E. F. parties to the within-written indenture do hby acknge to have received on the day of the within-written indre of and from the within-named G. H. and I. K. the sum of £ being the full conson money within mentd to be by them pd to us, that is one moiety thof from the sd G. H. and the or moiety thof from the sd J. K. [*If there are two releases add*] And for which sd sum of £ we have also signed a rect in like manner on the back of another such indre of release within-written. } £
Witness, &c. [see *ante*, No. XXI.] }

ACTS OF PARLIAMENT.

- | | |
|---|---|
| 1. <i>Division of Acts of Parliament.</i> | <i>In what cases adopted.</i> |
| Local and Personal Acts. | |
| Personal Acts. | |
| 2. <i>Private Bills as Assurances.</i> | 3. <i>Mode of proceeding as to Private Bills.</i> |
| | 4. <i>How carried through.</i> |



Division of
Acts of Parlia-
ment.

Sect. 1. Acts of Parliament are distinguished into public and private, and these latter are again distinguished into *local and personal*, or *personal* merely.

No. XXIV.
Canal Act.

No. XXIV.

Local Act (a) for making a Canal by an incorporated Company.

Preamble.

Sect. 1. Whas [*here state the reasons for making the canal, and also that it is intended to communicate with some other canal &c., as the case may be*]: May it therefore please your Majesty, that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That (b) R. A. &c. [*names of proprietors in alphabetical order*], and their successors, executors, administrators and assigns, or such of them as shall from time to time be possessed of any shares as thereafter provided, and their successors &c. shall be and they are hereby united into a company for the carrying on, completing, and maintaining the said intended canal for barges &c., according to the powers, rules, orders and directions hereinafter set forth and expressed for that purpose, and shall be one body politic and corporate, by the name of the "Company of Proprietors of Canal."

Proprietors incorporated.

Name of Company.

Powers for making the canal and works.

Sect. 2. And be it further enacted (c), That it shall be lawful for the said Company, and they are hereby authorized and empowered from and after the passing of this Act, to make, complete and maintain a canal or navigation, navigable and passable for barges, boats and other vessels, from [*here describe the place through which the intended canal is to pass, and any other canals with which it is to communicate,*] and also in like manner to make &c. reservoirs [*describe them*], and also to make &c.

(a) This precedent of a Canal Act contains the general provisions necessary to be inserted in every Act incorporating a company for commercial purposes, and by the omission of some clauses, and the addition of others, may be adapted to any other Act of a like kind. For the special provisions in such other private bills, see the Railway Act, *post*, No. XXVII., and a work intitled "Precedents for Private Bills."

(b) If the canal is to be made by commissioners, say "That each and every subscriber of £ or upwards, towards the execution of the said works, together with the representatives in Parliament of the county of &c., shall be and are hereby appointed commissioners."

(c)*This is to be repeated at the beginning of every section, although omitted here.

feeders, locks, docks, basins, and other conveniences for the said navigation, and to supply the said canal and the reservoirs, together with the said feeders, &c., with the floodwaters that may be necessary for the purposes of the said navigation, and to make, raise and erect such steam engines and other machinery as may be necessary for the purpose of supplying the said canal &c. with water, to make so many soughs, tunnels, channels, feeders, aqueducts, headways and archways, as they think proper, and to cleanse, scour, cut, dig, open, deepen, enlarge or straighten all springs, streams, brooks and water-courses, which by virtue of the powers of this Act shall be brought into or communicate with the said reservoirs, feeders &c., and also for the purposes aforesaid to cut and raise the banks of any of the streams &c., and to make proper trenches or passages for water in and upon the lands adjoining, or near to the said canal &c., and for the purposes aforesaid, the said Company, their deputies, and servants &c. are authorized to enter into or upon any lands of any persons, bodies politic or collegiate whatsoever, and to survey and take levels of the same or any part thereof, and to set out or ascertain such parts thereof as they think it necessary and proper for making the said canal, reservoirs &c., and also to bore, search for, dig, get, remove and carry away, and use earth, clay, stone, soil, rubbish, trees, roots, beds of gravel, sand, or any other matters dug or got out in making the said canal &c.; and also to remove earth &c., or any other matters which may hinder the making or using the said canal &c.; also to erect bridges, piers, arches, tunnels, wharfs, quays, warehouses, toll-houses, watch-houses, landing places, weighing beams, or other machinery, and all such ways, roads, towing paths and conveniences, as and where the said Company may think proper, and from time to time to alter, repair, amend, divert, or discontinue the same; and also to make, maintain, repair and alter any fences or passages over, under, or through the said canal or other channels, basins, locks &c., and all other works in pursuance of and according to the true intent and meaning of this Act, they the said Company doing as little damage as may be in the execution of the several powers to them hereby granted, and making satisfaction in manner hereinafter mentioned to the several persons interested

To search for
materials.

To erect
bridges.

No. XXIV.
Canal Act.

in the said lands ; and this Act shall indemnify the said Company and their deputies, and servants &c.

Not to take
water from mills.

Except the surplus.

Sect. 3. Nothing in this Act shall authorize the Company or persons acting under their authority to take or use the water of any rivers or streams supplying any mills, except such surplus water as shall in times of floods be over and above what is sufficient for such mills ; but every such river &c., crossed or diverted by the said canal, or by any feeder &c., shall be well and effectually tunnelled or conducted under or by the side of said canal &c.

Appointment of
engineers to as-
certain surplus
water.

Award.

Umpire.

Sect. 4. For the purpose of ascertaining when there is more than sufficient water to supply the said mills, A. B. of &c., a civil engineer, on the part of the owner of such mills, and C. D. of &c. on the part of the said Company, is hereby appointed to gauge and determine what quantity of water is a sufficient supply, and their award shall be binding upon the same parties ; and by their award they shall direct the situations where proper, gauges or weirs shall be placed upon the said rivers, brooks, rivulets, watercourses, streams of water or springs respectively for the supply of such mills ; and within three calendar months from the passing of this Act, they are hereby required to nominate some indifferent person as umpire to decide any matter in difference between them ; and within fifteen months from the passing this Act shall make their award in writing ; and in case of any difference of opinion, they are required within ten days from the making their award to certify in writing the matters of difference to the said umpire, who within three calendar months from the delivery of the said certificate shall, by writing under his hand, award and settle all such matters.

Sect. 5, 6. In case either of the engineers so appointed die before making his award, or neglect or refuse to act for the space of three calendar months, another engineer may be appointed by the party whose engineer has died or so refused to act, and the newly appointed engineer shall have the same powers in all respects ; and in case the umpire die, or refuse or neglect to act for the space of one month, then the two engineers shall appoint another person, who shall have full power to act as umpire.

Erecting gauges
or weirs.

Sect. 7. And all gauges or weirs so directed by the engineers to be made and set up shall be erected and completed by the

said Company within such times as shall be by the award of the engineers be directed; and the said Company shall for ever afterwards maintain and keep the same in good and substantial repair.

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Canal Act.

Sect. 8. And the said Company shall not under any pretence whatsoever take or use, or suffer to be taken or used for the said canal &c., or any feeder &c., any such surplus water as aforesaid, except for the purposes of executing the works of the said canal, until the gauges or weirs be actually made and set up.

Sect. 9. Every award in writing, with the plans and sections thereunto annexed, shall be inrolled within six calendar months with the clerk of the peace, and copies of the same shall be allowed in all courts as legal evidence.

Inrolment of
award.

Sect. 10. All charges and expences of the said engineers and umpire, as also those of inrolling the awards, shall be borne by the said Company.

Sect. 11. And it shall be lawful for the owners and occupiers of the several mills upon the said rivers &c., by writing under their hands, at any meeting to be convened in pursuance of any notice given by advertisement at least ten days previously, and at which not fewer than three shall be present, to appoint an agent to inspect the gauges from time to time; and such agent shall be paid by the Company.

Provision as to
mills.

Sect. 12. All persons interested in the said rivers &c. may repair damages at the expence of the Company.

Sect. 13. Maps and plans describing the lines of the said canal, reservoirs &c., and the lands through which they pass, shall be deposited with the clerk of the peace; and all persons interested therein shall have liberty to inspect the same and make extracts therefrom and copies thereof on payment of one shilling for each time of inspection, and sixpence for every copy of one hundred words; and such copies are hereby declared good evidence.

Deposit of
maps, &c.

Sect. 14. Nothing in this Act shall extend to authorize the said Company to take, use or damage any house or other building, or any park, avenue, planted walk, lawn, or pleasure ground, nor any yard, garden or orchard, without the consent

Not to damage
houses &c.,
without consent
of owner.

§ 1. XXV.
Canal Act

Diversing brooks
or roads.

Breadth of
canal &c.

Bodies politic
empowered to
sell.

in writing of the respective owners and occupiers thereof, other than such as are specified in the schedule to this Act annexed.

Sect. 15. In all cases where it is found necessary for the purposes of this Act to divert or turn any brook, stream or watercourse, or to cut through or injure any carriage or horse-road, or footway, either public or private, or to take down or injure any bridge, so as to render the same impassable or inconvenient for travellers or carriages, the said Company shall at their own expence make a cut or channel for such brook &c., or a temporary bridge of no less width; and when such cut or channel is completed, the fee simple of the same shall be vested in the said Company; and such bridge so to be built or otherwise enlarged, and such road or footway so to be altered as aforesaid, shall be ever thereafter repaired by the parties bound to repair the old bridge.

Sect. 16. The lands or grounds taken and used for the said canal, and the towing paths, banks and side drains thereof, and the ditches and fences for such towing paths &c. shall not exceed yards in breadth, measured horizontally, except &c. [*here state any exceptions*].

Sect. 17. After any lands, grounds or hereditaments, have been set out and ascertained for making or improving the said canal and the reservoirs &c., it shall be lawful for all bodies politic, corporate or collegiate, or corporations aggregate or sole, tenants for life or in tail, or for persons having any other partial or qualified estate or interest, husbands, guardians, trustees, executors and administrators, and all other trustees or persons whomsoever, not only for and on behalf of themselves, their heirs and successors, but also for and on behalf of all other persons entitled in reversion, remainder and expectancy after them, if incapacitated; and for or on behalf of their *cestui que trusts*, whether infants, issue unborn, lunatics, idiots, femmes covert, and to and for all femmes covert possessed of or interested in their own right, or intitled to dower or other interest therein, and for all persons whomsoever seised or possessed of or interested in any lands, grounds or hereditaments, set out and ascertained for the purposes aforesaid, to contract with the said Company to sell and convey the same to them,

No. XXIV. not settled by agreement between the parties, shall be ascer-
Canal Act. tained by the verdict of a jury, as is directed by this Act.

Conveyance of commons by lords of manors. Sect. 19. In all cases where there is occasion for the purposes of this Act to cut through any part of any common or waste grounds or other lands charged with the rights of common, the conveyance thereof by any body politic, or person having such or the like interest in the manor, shall be a good and sufficient conveyance to the said Company for the purpose of vesting in them the fee simple of such commons or waste ground, as fully and effectually as if every person having any right of common had joined in and executed such conveyance; and the compensation to be paid by such Company for any right of common upon such commons or waste grounds shall be paid to the churchwardens of the respective townships or parishes wherein such commons &c. are situate, or where such rights are taken out of any other lands than such commons &c., the compensation shall be paid to the person having such estate or interest as aforesaid in the said rights of common or in the lands whereunto the same are appendant or appurtenant, or the same shall be deposited in the Bank of England; provided, that in cases where any such manor is vested in freeholders or inhabitants at large, or in any greater number of persons than four, or where it is not known to what lord the manor belongs, or in what manor such common or waste ground is situated, the conveyance by four at least of the freeholders, whose estates have common right in such common or waste ground, and whose estates are assessed yearly to the poor rates to three-fifths at least of the whole property in each of the said townships or parishes which have such common right, shall be a good and sufficient conveyance.

Power to purchase lands severed by canal.

Sect. 20. In cases not falling under the provisions hereinbefore contained, where lands may be cut through for the purposes of this Act to the detriment of the owner, it shall be lawful for the said Company to contract for the purchase of such lands.

Power of resale.

Sect. 21. And it shall be lawful for the said Company to resell all such lands as they have purchased, not wanted for the said canal; provided, that the offer of resale shall first be made to the owners of the adjoining lands at a price to be fixed on by

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Canal Act.

unless the same be restrained and limited by express particular words contained in such grants; and that such grantees or other purchasers, their heirs, executors, administrators and assigns respectively may, in any action to be brought, assign a breach or breaches thereupon, as they might do in case such covenants were expressly inserted in such grants and conveyances respectively.

Sect. 24. All and every the sum or sums of money received by the said Company, as the consideration for any such sale, shall be applied for the same or like purposes as the money hereby authorized to be raised is to be applied.

Satisfaction to
be made.

Sect. 25. All bodies politic, and other persons hereinbefore capacitated to sell and convey lands, may accept and receive satisfaction, directed to be made in gross sums [and not by way of annual rents] (a), for any damages to be sustained in making and completing the said works hereinbefore authorized to be made; and in case the said Company and the said parties interested in said lands do not agree as to the amount of such satisfaction, the same shall be ascertained by a jury, as is hereinafter directed.

Settling differ-
ences respecting
satisfaction.

Sect. 26. And for settling all differences between the said Company and the several owners or persons interested in the said lands &c. taken, used, or damaged, in the execution of the power hereby granted, touching the purchase money or recompence to be made for the same, if any person or body politic so interested refuse to accept the same, and give notice thereof in writing to the said Company within fourteen days after offer made in writing by the said Company or their agent, and the parties giving such notice thereon request that the matter may be submitted to the determination of a jury; or if any such person &c. neglect or refuse to treat with the said Company, then they or their committee of management are hereby em-

(a) Where glebe lands or tithes are authorized to be taken, the satisfaction is usually required to be annual, as in the following form: "Nothing herein contained shall be construed to extend to enable the said Company to make satisfaction or compensation for the purchase of any lands to be taken for the purposes of this Act, or for any damages done in the execution thereof, to any persons or body politic, by any annual rent, save and except to spiritual persons and their lessees [or 'save and except to such persons as shall be herein expressly named']."

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Quaker, to make his solemn affirmation], or to give his verdict, or otherwise misbehave himself; and if any person summoned as a witness refuse to be sworn &c., or to give his evidence, then in every such case the person so offending shall forfeit the sum of 10*l.*, to be levied by warrant under the hand and seal of one justice of the peace, by distress and sale of the goods and chattels of the person so offending.

Costs.

Sect. 28. In every case where a verdict is given for more money than had been offered by the said Company, or where by reason of absence in foreign countries, or other impediment or disability, the reasonable expences of impannelling the jury shall be defrayed by them; and in case the same be not paid within five days after demand thereof made, the same may be levied by virtue of the warrant of any justice of the peace by distress and sale of the goods and chattels of the said Company; but if verdict be given for the same, or a less sum than had been offered, then in all such cases [except as above excepted] the above-named costs shall be settled by the said sheriff &c. in manner following, that is to say, one moiety thereof by the said Company, and the other moiety by the party with whom the said Company have the dispute; which costs and charges shall be deducted out of the money so assessed; and in case no compensation be given by the jury, where the dispute is for compensation only, such costs may be recovered by the said Company by such ways and means as are provided for the recovery of any penalty or forfeiture by this Act.

Persons requiring juries to enter into bonds.

Sect. 29. Every person having any controversy with the said Company may, before any warrant is issued for summoning a jury, be obliged to enter into a bond, with two sufficient sureties, to the treasurer (*or* "clerk") of the said Company, in a penalty of 100*l.*, to prosecute his complaint, and to bear and pay such costs and charges as shall fall on him; and the said Company shall not be obliged to receive any complaint of damage sustained, unless notice thereof be given to them within the space of six calendar months next after the injury has ceased.

Mortgagees to convey.

Sect. 30. All and every person or persons, body or bodies politic, having any mortgage on any lands &c. to be taken and used for the purposes of this Act [not being in possession thereof

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Canal Act.

upon a petition to be preferred in a summary way by the person who would have been intitled to the rents and profits of the said lands, in the purchase of the land tax, or towards the discharge of any debts or other incumbrances affecting the same or other lands &c., as the said court shall authorize to be paid; or where such money is not so applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other lands, which shall be conveyed to, for and upon such and the like uses, intents, purposes and trusts, as the lands &c. so taken as aforesaid stood settled and limited; and in the meantime and until such purchase be made, the said money shall, by order of the said court, be invested by the said accountant-general in his name, in the purchase of the three per cent. reduced Bank Annuities, and the dividends thereof shall be paid by order of the court to the person who would have been intitled to the rents and profits of the said lands &c.

When less than
200*l.*, and ex-
ceeding 20*l.*

Sect. 32. If the money so awarded is less than 200*l.*, and more than 20*l.*, the same shall, at the option of the person intitled &c., be paid into the Bank of England &c. (*as before*), or be paid to two trustees nominated by such person, and the principal and dividends shall be applied by them in like manner as is hereinbefore directed with respect to the money paid into the Bank of England.

When less than
20*l.*

Sect. 33. Where the sum awarded is less than 20*l.*, the same shall be applied to the use of the person intitled, or in case of infancy or lunacy the same shall be paid to guardian or committee, for the use and benefit of such person.

Disputed title.

Sect. 34. In case the person to whom such sum of money is awarded refuses to accept the same, or is unable to make out a good title to the premises, or cannot be found, such sum shall be paid into the Bank of England, in the name &c. (*see above*); and where any question arises touching the title, the person who has been in possession shall be deemed to have been lawfully intitled, until the contrary be shewn to the court, and the dividend or interest of the Bank Annuities shall be paid and applied accordingly.

Expenses of
purchase.

Sect. 35. In cases where money is ordered to be paid into the Bank of England, it shall be lawful for the Court of Chan-

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Canal Act.

Capital to be
raised.

Application of
the same.

Shares to be
personal estate.

Names of pro-
prietors to be
entered in a
book.

Subscribing the
whole estimated
sum.

Borrowing by
way of mort-
gage.

necessary and reasonable ways and means for repairing, supporting, and making safe the said canal and other works.

Sect. 38. It shall be lawful for the said Company to raise and contribute among themselves, in such proportions as to them seem meet and convenient, such sums of money as they think necessary for the completing the said canal &c., not exceeding in the whole the sum of £ , and the same shall be divided into parts or shares, to be numbered in progression; and the money so raised shall be applied first in payment of the costs and charges of obtaining this Act, making the proper surveys, plans and estimates, and providing all matters preparatory thereto, and all the residue of such money shall be applied towards the carrying on and completing the said canal and other works.

Sect. 39. All shares of all persons in the said undertaking, or the joint stock or fund of the said Company, shall be deemed personal estate, and the names of proprietors and the number of their shares shall be entered in a book by the clerk to the said Company, who, after such entry, shall cause the common seal of the Company to be affixed thereto, and shall also cause tickets for the shares to be delivered to the subscriber, and every such subscriber shall pay to the said clerk 2s. 6d. and no more for every such ticket, and the same shall be admitted as evidence in all courts whatsoever of the title of such subscriber, his executors, administrators, successors and assigns, to the share therein specified, but the want of such ticket shall not prevent the owner of any share from disposing thereof or receiving annually his share of the profits.

Sect. 40. The whole of the estimated sum of £ necessary for completing the said canal, (or, "the said canal and other works,") shall be subscribed for before any of the powers given by this Act shall be in force.

Sect. 41. Provided that if the said Company be desirous, for the more speedy completion of the said canal, of raising by mortgage upon the credit of the said undertaking a further sum, and enter into a resolution to that effect at any special meeting of the said Company to be called for that purpose, it shall be lawful for them, pursuant to such resolution, to borrow the sum of £ , and they are hereby authorized to grant, assign, and

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the clerk of the said Company in a book to be kept for that purpose, and such book may be perused gratis, at all seasonable times, by any of the proprietors or creditors of the said Company, and all persons to whom such assignments are made, or who are intitled to the money thereby secured, shall and may from time to time assign, transfer, and set over his right, title or interest therein, unto any persons whomsoever, either by indorsement thereon or otherwise, which transfer may be made by a deed in writing in the form to the effect following; that is to say,

Assignment of
mortgages.

“ I, A. B., in consideration of the sum of £ to me paid by C. D. of , do hereby transfer the within mortgage, [*or*, “ a certain mortgage made to me by the Company of ,”] bearing date the day of , and the principal sum of £ thereby secured, and the interest now due and hereafter to grow due for the same, and all my right and property therein, unto the said C. D., his executors, administrators and assigns. *In witness* whereof I have hereunto set my hand and seal this day of

A. B.”

And every such transfer shall within twenty-eight days from the date thereof be produced to the clerk (*or*, “ one of the clerks”) of the said Company, who shall thereupon cause an entry or memorial thereof to be made as before directed, and for such entry said clerk shall be paid the sum of 2s. 6d. and no more, and after such entry and not before, such transfer shall intitle the assignee therein named, and his executors, administrators and assigns, to the full benefit of the original mortgage.

Interest of
money bor-
rowed to be
paid first.

Sect. 42. And the interest of all money borrowed by mortgage shall be paid half-yearly to the several persons intitled thereto, in preference to any interest due and payable by virtue of this Act to the said Company of proprietors.

Proprietors
intitled to vote
in respect of
their shares.

Sect. 43. All persons and bodies politic, who have subscribed to or become intitled to any shares for raising the said sum of £ , shall have a vote or votes according to the number of shares for which they have subscribed in manner following; that is to say, for and in respect of one share, one vote; of three shares, two votes &c. (*here set out the particulars, as the case may be*); and every question shall be decided by the majority of votes present at any meeting.

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in evidence in all courts, and the same shall be open *gratis* to the inspection of all proprietors, who may have copies thereof, on paying for every hundred words to be copied the sum of sixpence, and so in proportion for any greater or less number; and if any clerk refuse to permit such inspection, he shall for every such offence forfeit a sum not exceeding 10*l.*; and whenever any treasurer or clerk dies or is removed, or quits the service of the said Company, it shall be lawful for the said committee from time to time to appoint some other person in his place until the next general meeting.

Treasurer and
clerk not to be
the same per-
son.

Sect. 48. It shall not be lawful for the said Company to appoint the person who may be appointed their clerk, or the partner of such clerk, or any one in the employ of such clerk or his partner, to be treasurer, and in like manner not to appoint any person appointed as their treasurer, or his partner &c., to be their clerk; and every person, or his partner &c., accepting the office of treasurer and clerk, shall forfeit the sum of 100*l.* to any person suing for the same, to be recovered in any of her Majesty's courts of record at Westminster.

General meet-
ings.

Removal of
officer.

Sect. 49. The first general meeting, or any other general meeting of proprietors, may appoint any other half-yearly or other general meeting to be held periodically or otherwise; and the said Company shall also have full power from time to time at any general meeting convened under this Act to remove any person who has been chosen an officer under them, or any member of the said committee, and to revoke or alter any of the rules and directions herein prescribed with regard to their proceedings among themselves, as to them shall seem meet, and to make any rules, orders and bye-laws, as shall appear proper and necessary for regulating the proceedings of the committee of management, and of all officers and workmen, for the orderly using the said intended navigation, and the locks, sluices &c., and other works belonging to the same, for regulating the turn and order of the passing and repassing of the boats, and for the orderly behaviour of the boatmen &c., and all other matters relating to the general superintendence and management of the said navigation: Provided always, that copies of such rules &c. or so many of them as relate to the using the intended navigation and works, and the conduct of

Rules, orders,
and bye-laws.

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brought up to the 25th *March*, shall be laid before the said proprietors to be audited and settled, and such account shall be deposited with the clerk of the said Company during twenty-one days immediately preceding such meeting, for the purpose of being inspected by the proprietors at all seasonable times; and every such treasurer &c. shall produce all receipts and vouchers, and pay over all such monies as remain in their respective hands to the said Company or such person as they appoint; and if any treasurer, &c. refuse to produce such vouchers or make payment of such monies within twenty-one days after being thereunto required, it shall be lawful for the said Company to bring any action for the same, or to make complaint to any justice of the peace, who may determine the matter in a summary way, and if satisfied that any monies remain in the hands of such treasurer &c. may levy the same by distress and sale, and in default of distress may commit offender for any period not exceeding calendar months, or until he compound with the said Company.

Appointment of
chairman by
committee.

Sect. 54. The said committee shall at their first and every other meeting, to be held in pursuance of this Act, appoint a chairman, and any or more shall constitute a meeting; and all questions at any such meeting shall be decided by a majority of the members present, but no member shall have more than one vote at such meetings, except that, in case of an equal division, the chairman shall have the casting vote; and the said committee shall make reports to and be subject to the orders and directions of such general meeting, and subject thereto the said committee shall meet or adjourn their meetings from time to time as they think proper.

Sect. 55. All books, accounts, writings and papers whatsoever in the custody of any such treasurer &c., his executors or administrators, in anywise relating to the said intended undertaking, are hereby declared to be the rightful property of the said Company; and if any agent, toll collector, wharfinger, lock keeper, bridge keeper or other servant of the said Company occupying any house, offices or buildings belonging to the said undertaking be discharged from his office, he, or in case of his death, his wife and family, shall deliver up possession of the same, and in case of refusal it shall be lawful for any justice of the

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recover the
amount with
interest.

Enforcing pay-
ment of calls.

neglect or refuse to pay the same, the said Company are hereby empowered to sue for and recover the same with interest, after the rate of *5l. per cent. per ann.* from the time appointed for the payment thereof.

Sect. 60. For the better enforcing the payment of such calls, if any subscriber, for the space of thirty days next ensuing any such call, neglect or refuse to pay his rateable share, he shall forfeit the sum of 20*s.* for every share, and in case he continues to refuse or neglect for the space of three months, it shall be lawful for the said Company at some general meeting to declare the shares of such person to be forfeited, and such forfeited shares may be sold at a public sale by the said Company for the most money that can be got for the same, and the monies arising from such sale shall be applied for the purposes of this Act; provided that no such share shall vest in the said Company until notice thereof has been given to the person or to the clerk or officer of any body politic in whose name such share stands in the register book, the same to be left at the place of abode of the party ten days at least previous to such vesting; and in case the place of abode be unknown, then the notice shall be published in the London Gazette or such other newspaper as the said committee direct: Provided also, that no share shall be forfeited if the proprietor pay what appears by the statement in such notice to be due, together with interest for the same, and the aforesaid penalties for non-payment, and all expences attending the application for the same: Provided also, that such forfeiture, when taken advantage of, shall be an absolute indemnification and discharge to the proprietor against all actions and proceedings for any breach of contract, and in case the money produced by the sale of any shares be more than sufficient to pay all arrears of any call and lawful interest thereon, together with the expences of such sale, the surplus of such money shall be paid on demand to the owner, and no more shares of defaulter shall be sold than what may be deemed necessary to pay such arrears &c.

Proceedings in
actions or suits

Sect. 61. In all actions and suits for the recovery of arrears of call it shall be sufficient for the said Company to allege that the defendant, being an owner of such shares, is indebted to the said Company in such sums of money as the calls in arrear amount to, for such and so many calls, of such and so many

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mitted to the clerk of the said Company, who shall file the same and make an entry thereof in the book kept for the entry of transfers of shares; and before any person claiming by virtue of any bequest or will, or in the course of administration, is intitled to receive any part of such profits, the said will or the probate thereof, or the letters of administration, shall be produced and shewn to the said clerk, or a copy of so much of such will as relates to the said shares shall be sworn to, and shall also be transmitted to the said clerk, who shall file and enter the same as before mentioned; and in all cases where the right to any such shares passes from the original proprietor by any legal means, other than a transfer and assignment thereof as herein directed, an affidavit shall be made and sworn to, stating the manner in which such share has passed to such other person, and the same shall be transmitted to the clerk, who shall thereupon enter and register the name of every such new proprietor; and every person whose name stands in such register book as a proprietor shall be deemed and taken to be a proprietor of the several shares standing in his name, and no assignment or other instrument giving title to any shares or to any securities on the said navigation, or the monies thereby secured, which has not been registered by the said clerk, shall be admitted as evidence for the purpose of establishing the claims of any parties.

Sect. 65. If the said Company deem it expedient out of any surplus monies or otherwise to buy up any shares in the said canal navigation offered for sale, it shall be lawful for any general meeting of the said Company to direct that any such share so bought up shall merge in the said undertaking, or that the same shall be transferred to the clerk of the said Company in trust for the said Company, and such shares may at any time thereafter be sold for the purpose of raising any sum of money which may be wanted for carrying on the said undertaking.

Company em-
powered to take
tolls.

Sect. 66. It shall be lawful for the said Company from time to time hereafter to demand, take and recover to and for their own purposes the several rates hereinafter mentioned for tonnage of the several articles to be carried upon the said canal; that is to say, (*here set out the rates of tonnage*):
And all such rates, tolls and duties shall be payable respec-

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for loading and unloading: Provided always, that the person claiming any such exemption as aforesaid, and intending to pass through any lock, shall give notice to the nearest collector of the said rates, or the lock-keeper, of his intention three hours at least before passing through the same; and if any person, claiming or using the exemption as aforesaid, use or dispose of the articles, for which exemption is claimed, he shall forfeit for every offence the sum of 5*l*.

Toll collector to
put up his name
&c.

Sect. 70. Every toll collector shall place his Christian and surname, painted on a board in legible characters, in the front or some conspicuous part of the wharf [stopgate, tollhouse or tollgate], immediately on his coming on duty, each of the letters of such names to be at least two inches in length, and of a breadth in proportion, and painted either in white letters on a black ground, or in black letters on a white ground, and shall continue the same so placed during the whole time he is on duty; and in case of default, or if any such collector demand or take a greater or less rate, toll or duty from any person than he is authorized to do, or refuse to permit any person to read the inscription on such boards, or to tell his name, or give a false name, or wilfully or unnecessarily obstruct or prevent any vessel from passing [or passenger from passing any turnpike or tollgate], or use any scurrilous or abusive language to any proprietor or officer of the said Company, he shall forfeit for every such offence a sum not exceeding , to be recovered as hereinafter is directed.

Power to take
wharfage rates.

Sect. 71. In consideration of the expences which the said Company must sustain in the erection of wharfs and cranes for the loading and unloading of goods, it shall be lawful for them to demand and take from time to time, to and for their own proper use, for every ton of goods, the sum of for all goods remaining six days upon any such wharfs, and the further sum of per day for every day they remain after such six days; provided, that no goods shall remain upon such wharfs for any period above a month, without the licence or consent of the committee of management first had and obtained for that purpose; and in case they remain longer, it shall be lawful for any collector or agent of the said Company to remove and detain the same until payment of the charges of such removal

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To vary the tolls.	Sect. 74. And it shall be lawful for the said Company, at any general meeting, to reduce and again to advance the tolls, as they may see occasion: Provided, that the respective tolls &c. so advanced shall not exceed the sum of .
To demise the tolls.	Sect. 75. And it shall be lawful for the said committee from and after the term of two years from the passing of this Act, by any instrument in writing under their hands and seals, to demise all or any part of the said tolls &c. for any term not exceeding three years at any one time, to any person for the highest rent that can be got for the same, either by public bidding or otherwise: Provided, that two calendar months' previous notice be given of the intention of the committee to demise such tolls &c., and that the person renting the same give satisfactory security for the performance of his bargain, and the person so renting the tolls &c. shall have full power to demand and receive the same (c).
Tonnage of timber, &c.	Sect. 76. For the better ascertaining the tonnage of timber and of light goods, forty cubic feet of oak, ash, elm, beech, larch, mahogany and other heavy timber wood, whether squared or not, and fifty cubic feet of pine, poplar and other light wood, and forty cubic feet of light goods not weighing twenty hundred weight, of one hundred and twelve pounds avoirdupois, shall be deemed one ton weight.
Master, &c. of boats to give account of goods on board.	Sect. 77. Master or owner of any boat, barge or other vessel navigating the said canal shall give in a true account, in writing signed by him, of the goods contained in every boat, and where the goods are subject to different rates, shall specify the quantities liable to the payment of each rate; and in case of neglect or refusal to give an account, or giving in a false account, or refusing to produce his invoice or bill of lading, such master &c. shall forfeit to the said Company the sum of 5 <i>l.</i> for every offence,

(c) Here may be added a provision for giving the Company the power of re-entry on nonpayment of the rent, or non-performance of the covenants, which may vary according to circumstances.

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If they refuse,
Company may
erect them.

to the same across any lands belonging to the said Company, and to land any goods upon such wharfs &c., and also to make and use proper places for boats &c. to lie and turn in and pass each other, so that the making and using them respectively do not obstruct or prejudice the said navigation, or the towing paths thereof; and all rates and tolls demanded for the use of such wharfs &c. [not exceeding the rates hereinbefore limited for wharfage,] shall be and the same are hereby accordingly vested in such lords, owners or lessees, (as the case may be); and if any such lord &c., within the space of six calendar months after notice given him by the clerk of the said Company, that any part of his manor &c. is necessary or proper for making wharfs, do not give notice to the said clerk of his intention to proceed forthwith to the erection of such wharfs, and to keep the same in good and substantial repair, then the said Company shall have full power without let or hinderance to make use of any such parts of such wastes for the purposes aforesaid, they first making satisfaction for the same in manner as hereinbefore directed: Provided always, that nothing hereinbefore contained shall extend to authorize the said Company to make use of any wharf &c. of any lord &c. without his consent in writing.

Penalty on per-
sons evading
tolls.

Sect. 81. If any person intrusted with the care of any boat &c. attempt to evade the said tolls &c., he shall for every such offence forfeit to the said Company the sum of 5*l*.

Poles, &c. pro-
hibited, unless
of certain di-
mensions.

Sect. 82. No boat &c., having any pole, shaft, or instrument for punting or navigating the same, pointed with iron or otherwise, of less area at each end thereof than four square inches, shall pass along the said canal, and it shall be lawful for the agents or servants of the said Company to seize such poles &c. in case they be found on board any such boat &c., and to stop such boat &c. until the same be delivered up, and the master &c. shall forfeit a sum not exceeding 10*l*. for every pole &c. found on board.

Places made for
vessels to pass.

Sect. 83. In such parts of the said canal as are not sufficiently wide for two boats to pass each other, it shall be lawful for the said Company to cut spaces in the lands adjoining [not being a garden, yard, orchard, park, paddock, plantation, or avenue to a house], and all vessels meeting any other

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be distinguished by a post or mark], such vessels shall go up and come down at such lock by turns as aforesaid, by which means one lock full of water may serve two or more vessels; and if any person offend against this regulation, he shall on conviction before one justice, and on the oath of one witness, for every such offence pay the sum of 40*s.* [*or* “any sum not exceeding 5*l.*”]

Gauging ves-
sels.

Sect. 86. Every person having the charge of any vessel shall from time to time, when thereto required, permit his vessel to be gauged by persons appointed by the said Company; and he shall not suffer his vessel to be unloaded without a stage being laid from the side thereof to the bank of the canal, on pain of forfeiting 5*l.* So, on pain of like forfeiture in case of default, he shall cause his name and place of abode, and the number of his vessel to be registered with the clerk of the said Company, and shall also cause such name &c. to be painted in large white capital letters on a black ground, four inches high at the least, at the outside of the head or stern, higher than the place to which the vessel sinks when fully laden, and also fix on each side of such vessel indexes of any metal of such graduated dimensions, of such convenient height, and under such regulations, as the said committee of management from time to time shall direct, so that the true weight of the lading on board may be seen.

Sect. 87. The master or owner of any vessel, navigating the said canal, shall be answerable for all damage done by such vessel, or the horses drawing the same, or by any of the boatmen and others employed in and about the same; and also for any trespasses and damages committed or done to the owner or occupier of any houses or buildings, lands or tenements adjoining the said canal, by leaving gates open or otherwise; and every such master or owner shall, on conviction before one justice, pay the person injured the damage, to be ascertained by such justice, provided such damages do not exceed the sum of £ , and in default of payment the same shall be levied by distress and sale, or if the damages exceed that sum, then the same may be sued for and recovered with full costs of suit: Provided also, that if any owner be compelled to pay any such damages by reason of any wilful act committed by his servant,

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Provision in
case of floods,
&c.

Sect. 91. Whenever the said canal or the works thereof are injured or destroyed by floods or unexpected accidents, so that the adjacent lands may thereby suffer damage, it shall be lawful for the said Company from time to time, by their servants, agents or workmen, to enter into such lands or grounds (not being the ground whereon any house or other building stands, or garden, orchard, park, paddock, planted walk, nursery grounds, or avenue to a house), and to dig for and carry away stones, gravel, or other materials necessary for the repair of the said works, without any previous treaty whatever with the owner or person interested, but doing as little damage thereby as the nature of the case will permit: Provided always, that the said Company shall make ample satisfaction to the parties prejudiced by reason of any such floods or other accidents.

Owners may
make branch
canals.

Sect. 92. It shall be lawful for the owners or occupiers of any lands adjoining to the said canal to make branch canals and railways to communicate with the same, giving to the said Company twenty-one days' previous notice of their intention so to do, and making, if so required, stop-gates, so as to prevent the water from being drained or wasted out of the said canal; and where such branch canal is cut through any towing path, the said Company may require bridges to be made of such dimensions and constructions as may be approved of by two justices of the county: Provided always, that the Company shall not receive any tonnage for the passing of any goods or other things along such branches or railways.

Compensation
for damages
not herein-
before provided
for.

Sect. 93. If at any time hereafter any person sustain any damage by reason of the execution of any of the powers given by this Act, for which a compensation is not hereinbefore provided, then and in every such case such damages shall be assessed by a jury, and the sums to be paid shall be levied, recovered, and applied in such manner as is hereinbefore directed with respect to such damages as are hereinbefore provided for.

Provisions as
to condensing
water for steam-
engine.

Sect. 94. It shall be lawful for the owners of any lands near the said canal to make a communication between the water therein and any steam-engine by means of one or more metal pipes, of sufficient strength and thickness to prevent any leakage or waste of water, and to draw from the said canal such

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of the peace, it shall be lawful for him to summon the party complained against, and on such summons to hear and determine the matter of complaint, and to convict the offender and adjudge him to pay the penalty, and proceed to recover the same, although no information in writing has been exhibited before him; and all such proceedings by summons without information shall be as good and effectual to all intents and purposes as if an information in writing had been exhibited: Provided always, that, except in the cases hereinbefore mentioned, all complaints and informations for offences against this Act may be made before one justice of the peace for the county, liberty or place wherein the offence is committed; and such justice is hereby authorized to take cognizance thereof, and summon the party complained of, and upon complaint upon oath [or affirmation], to issue his warrant for the apprehension of such person, and upon his appearance or otherwise to make such determination as appears to him just; and upon conviction may issue his warrant under his hand and seal for levying the penalty or forfeiture, in case the same be not immediately paid, by distress and sale; and it shall be lawful for such justice to detain the person so convicted in safe custody until the return of such distress, unless he give sufficient security; and if, upon the return of the warrant, it appears that there is no sufficient distress, or if it otherwise appear to the justice that the offender has not sufficient goods whereon such penalty, together with the costs and charges, may be levied, such justice shall not be required to issue such warrant of distress, but he is hereby authorized by warrant under his hand and seal to commit such offender for any term not exceeding three months, unless such penalty &c. be sooner paid; and all such penalties, when recovered, shall, when the application is not otherwise directed, be paid into the hands of the treasurer of the said Company, and shall be applied and disposed of towards the expences of the said navigation.

Power to apprehend offenders.

Sect. 98. And it shall be lawful for any person, seeing any offence committed against this Act, to apprehend offender and convey him or cause him to be conveyed before a justice of the peace: Provided always, that it shall be lawful for said Company to give informer any part of the penalties.

Sect. 99. Where any distress is made by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same a trespasser, on account of any defect or want of form in the information, summons or other proceeding relating thereto; but the person aggrieved by such irregularity may recover special damages in an action on the case; and no proceedings shall be quashed for want of form, or be removed by certiorari or otherwise into any of her Majesty's courts at Westminster.

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Distress not unlawful on account of irregularity.

Sect. 100. If any person be summoned as a witness to attend before any justice touching any matter of fact in any information contained, and he, without any reasonable excuse, refuse or neglect to attend [having been paid or tendered his expences], or appearing, refuse to make oath [or, if a Quaker, to make his affirmation] and to give evidence before such justice, he shall forfeit any sum not exceeding 5*l.*; and in case of any suit or litigation, the officers and servants of the said Company shall be deemed competent witnesses; and in all actions and proceedings for any claim or compensation under this Act, it shall be lawful for the clerk of the said Company, with the approbation of the aforesaid committee, to execute and deliver any release to any person for the purpose of discharging him, so that he may be produced as a witness, and to do with the like consent any other act, matter or thing, in any such actions.

Compelling attendance of witnesses, &c.

Officers of company to be competent witnesses.

Granting releases to witnesses.

Sect. 101. If any person, in any examination to be taken upon oath by virtue of this Act, wilfully and corruptly give false evidence, he shall upon conviction thereof be subject to the pains and penalties of perjury.

Sect. 102. Any person or body politic, thinking himself aggrieved by any order or judgment made in pursuance of any rule or bye-law of the said Company, or by any determination of any justice, may, within three calendar months after such order, complain to the justices at the next quarter sessions, having first given ten clear days' notice in writing of such appeal, and of the nature and matter thereof, and forthwith after such notice entering into a recognizance, with two sufficient sureties, to try such appeal; and the said justices at such quarter sessions are hereby authorized to hear and determine such appeal summarily, and may mitigate any fines, penalties or for-

No. XXIV. *Canal Act.* feitures, and may order any sum of money to be returned which has been levied, and award such costs to either party as they think proper.

Sect. 103. And no plaintiff shall recover any costs in any action to be commenced against any person for any thing done in pursuance of this Act, unless notice in writing, signed by the plaintiff's attorney, be given to defendant twenty-one days before commencing the same, or if good and sufficient tender of amends be made, or defendant with leave of court has paid into court such sum as he thinks fit.

Limitation of actions.

Sect. 104. Every action brought for any thing done in pursuance of this Act shall be commenced within six calendar months after the cause of action arose, or in case of continuing damages, within six months after the doing such damage has ceased, and shall be laid in the county where act was committed, and the defendant in such action may plead the general issue and give this Act and the special matter in evidence, and that the same was done by authority of this Act; and if it appear to have been so done, or the action be brought after the time limited, or in any other county than as aforesaid, in such case the jury shall find for the defendant; and if the jury so find, or if the plaintiff become nonsuit, or discontinue, or judgment on demurrer be given against him, defendant shall have such costs as between attorney and client (c).

Canal to be completed within a given time.

Sect. 105. In case the said navigation, and the several works hereinbefore described, be not completed within the space of seven years from the passing this Act, then all the powers given by the same shall absolutely cease, but without prejudice to such of the rights and powers as can be made available for the benefit of the said Company: Provided always, that the said canal, reservoirs, feeders and other works thereof shall not be under the survey of the commissioners of sewers: Provided also, that all manorial rights, privileges and immunities of lords of manors shall be hereby saved to them in as ample a manner as if this Act had not passed.

(c) Before the 5 & 6 Vict. c. 97, double and treble costs were usually given to defendants by the provisions of local Acts, all which are by that Act repealed, and defendants are to have costs only as between attorney and client.

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Estate Act.

Lords Spiritual and Temporal and Commons in this present Parliament assembled That they the sd (*T.*) their hrs and ass shall and may and are hby fully and effectually enabled and empowered absolutely to sell and dispose of the sd manor of

and every and any pt of the sd preses to the best purchaser or purchasers that can reasonably be gotten for the same and with the money arising by and from such sale shall pay off and discharge all the debts of the sd (*testator*) decd secured by mtges bonds and or. specialties and all interest which now is or shall become due for the same as far as the sd purchase money will extend and amount unto and if there be any overplus after such payments as afd the same shall remain in the hands of the sd (*T.*) and the survors or survivor of them and the exs of such survivor under the same trusts as the sd preses hby directed to be sold, except that if it shall happen that all the debts of the sd (*testator*) secured by mortgage or or. specialties be not yet discovered and that some or. debt or debts so secured shall hraft be found out affecting the real este of the sd (*testator*) in such case the sd overplus money shall be liable to pay off and discharge such debt or debts with the int. due thereupon, any thing in this Act contd to the contrary thf in anywise notwithstanding. And be it furr enacted that all and every such

Clause in favour
of purchasers.

purchaser and purchasers and his and their hrs and ass shall hold and enjoy the sd manor hereds and preses or so much thof as they shall resply purchase freed and discharged of and from all the right title int and trust which the sd (*I.*) his hrs exs or ads or any of them their or any of their hrs exs or ads or any or. psn or psns claiming or to claim by from or under them the sd (*I.*) or his hrs &c. or any of them or any crs by specialty of the sd (*testator*) [or. than tenants for yrs in posson under yrlly rents] might have or claim of, in, unto, or out of the same or any pt thof and that such purchaser or purchasers shall and may pay his or their purchase monies to the sd (*T.*) or the survors. And be it furr enacted that the sd (*T.*) or the survivor of them or the exs or ads of such survivor shall not be answe the one of them for the or. nor for the rect act or deed of the or. of them but for his own sevl and separate acts and deeds only nor chargbe or accountable with or for any mortgage or or. sum or sums of money for or in respect of the preses than shall actually come to his or

Trustees not to
be answerable
for the acts of
each other.

No. XLV.
Estate Act.

Intended husband to settle his estate.

Intended wife to settle her estate.

Conveyances to be valid notwithstanding their minority.

Intended husband to give releases and discharges.

estates and effects for the bent of them and the issue of the marre: but the sd (I. H.) and (I. W.) being both under the age of 21 yrs such mutual settlements cannot be made to the satisfaction of the pties concerned according to the common course of the laws of this kingdom witht the aid and authy of Parliament Therefore your Majesty's most dutiful &c. and be it enacted That it shall and may be lawful for the sd (F.) and (I. H.) notwithstanding his minority by any deed or deeds writing or writings conveyances surrenders and assurances to be by them the sd (F.) and (I. H.) notwithstanding such his minority extd in the presence of three or more witnesses To convey settle limit surrender and assure either before or after the said intended marre All and every the freehd and copyhd lds messes &c. unto and upon such psn or psns to for and upon such uses estates trusts intents and purps and subject to such provos declons and agts as are and shall be stipulated and agd upon betwn the sd (F.) and (G.) And be it furr enacted That it shall and may be lful for the said (I. W.) by any deed or deeds &c. by her notwithstanding such her minority extd in the presence of &c. by and with the consent and approbation of the sd (G.) or the survors &c. to convey &c. unto and upon &c. And be it furr enacted That such mutual conveyances surrenders settlts and assurances so to be made and extd by the sd (I. H.) and (I. W.) &c. shall notwithstanding such the respive minorities of the sd (I. H.) and (I. W.) be as good valid and effectual in law to all intents and purps as if they resply had been of the full age of 21 yrs at the time of the making and exting thof. And be it furr enacted That it shall and may be lful to and for the sd (F.) and the sd (I. H.) notwithstanding his minority to give any release and other discharge for the sd several sums of £ and such or. sums of money as the sd (I. H.) will be intitled to have and rece in case the sd intended marre shall be had and solemnized and to pay and apply and dispose of all or any part thof or direct the same to be pd applied and disposed of in such manner and to for and upon such uses trusts intents and purps as is or shall be agreed upon betn the sd pties and that such discharge and the payment application and disposition of the sd sums shall be as good effectual and binding in law agst him the sd (I. H.) as if he had been of the

full age of 21 yrs and that he the sd (*I. H.*) may give acquittances and releases for the rents and profits of such of the preses as by such settlts to be made as afd he shall be intitled to rece and take the rents and profits of and that such acquittances shall be as valid &c. Saving &c.

No. XXVI.
Estate Act.

No. XXVII.

Local Act for making a Railway.

No. XXVII.
Railway Act.

Sect. 1. Preamble and incorporation of the proprietors, see *ante*, No. XXIV.

Sect. 2. The said Company shall be and they are hereby authorized and empowered by themselves, their deputies, agents, officers and workmen, to make, complete and maintain a railway or tramroad, with proper works and conveniences adjoining thereto or connected therewith, for the passage of waggons and other carriages properly constructed, commencing at the place delineated on the plan, and described in the book of reference, deposited with the clerk of the peace for the county of (*here set out the intended line of railway (a).*)

Sect. 3. The said Company is empowered to enter lands of any persons and survey the same, and to set out and appropriate for the purposes herein mentioned such parts thereof as they are by this Act empowered to take for making the said railway, and there to bore, dig, cut, trench, embank, and sough, and also to remove, lay and use any earth, clay, stone, soil, rubbish, trees, roots, beds of gravel or sand, or any other materials which may be gotten in making such railway; also to build, set up, excavate or cut in, under, or upon the said railway so many embankments, bridges, piers, arches, cuttings and tunnels for passing under any streets or buildings, or passing any hills, vallies, roads, rivers, canals, brooks, streams or other

(a) If a branch railway is contemplated say—

"To make and maintain a branch railway from and out of the main railway, commencing at or near to that part of such main railway where it crosses a certain road called in and passing thence through or into , thence over and across the river by means of a viaduct or bridge to be erected from or near to the corner of a lane called in the township aforesaid &c."

No. XXVII.
Railway Act.

waters, and to alter the course of any waters as may be necessary for completing bridges or passages over the same; and also to erect such and so many houses, warehouses, tollhouses, landing places, weighing beams, cranes, fire engines, steam engines and other works and ways, as the said Company think necessary; and also to place, lay, work and manufacture the materials necessary for the making the said railroad and the works thereof, on the lands or grounds adjoining to the place where such works are intended to be made; and also to make and repair any fences or passages over, under, or through the said railway, and also to make drains or conduits into, through, or under any such lands &c. for the purpose of conveying water from or to the said railway; and to construct, make and do all other matters necessary for completing the railroad and the works thereof, according to the true intent and meaning of this Act, they the said Company, their deputies, &c. doing as little damage as may be in the execution of the power to them hereby granted, and making full satisfaction in manner hereinafter directed to the owners of the several lands for the several damages thereby sustained.

Provision for
deficiencies in
the land tax.

Sect. 4. And whereas by reason of taking down buildings and making alterations in pursuance of this Act, there may be deficiencies in the assessments for land tax in the parishes herein mentioned, the said Company shall, unless they think fit to redeem the land tax, be liable from time to time to make good such deficiencies.

Construction of
tunnel in the
town.

Sect. 5. As the intended railway is to be carried by means of a tunnel through the town of as aforesaid, the same shall be constructed under the houses and streets in the line marked out on the plan deposited with the clerk of the peace, according to a section and specification submitted to and approved by the surveyor of the corporation of previous to the work being commenced, who shall at all times have full liberty and authority, with any assistants or workmen, to inspect and examine the same during the progress of the work, and during the time the said tunnel continues to be used; and it shall not be lawful for the said Company or their workmen to use any gunpowder for the purpose of blasting without the consent of such surveyor; and in case any agent or servant of the said Company

Gunpowder not
to be used.

use any gunpowder, he shall for every such offence forfeit a sum not exceeding 5*l.*, to be recovered as any other penalty under this Act: Provided always that no deviation shall be made in the said plan and sections without the consent of such surveyor: Provided also that in case it be found necessary to form eyes or openings from the said tunnel, the same shall be formed in such places only and according to the specification and section previously submitted to and approved by the said surveyor.

No. XXVII.
Railway Act.

Openings into
tunnel.

Sect. 6. Where the said tunnel is to cross any drain or sewer, and it is necessary to alter the direction of any drain or sewer, such alteration shall be made according to the directions given by the surveyors of highways of the town of , such directions to be stated and delineated in some specification and section; and in case the corporation of the said town of , by virtue of any powers vested in them, deem it necessary to make any new or additional sewers or drains in any part of the line of the said tunnel, it shall be lawful for them to construct the same in such manner as to them seems requisite, so as such construction does not interfere with the carriage or conveyance of any goods along the said tunnel: Provided always that the said Company shall keep the said tunnel and the openings and other works appertaining thereto in constant repair, to the satisfaction of the surveyor of the said corporation.

Sewers to be
altered accord-
ing to directions
of surveyors of
highways.

Corporation
may make new
sewers.

Sect. 7. Before the said Company proceed to undermine any houses for the purpose of excavating any tunnel, they shall, if required by the owners of such houses, purchase the same, and pay purchase or consideration money in manner hereinafter mentioned.

Company to
keep tunnel in
repair.

Company to
purchase houses
that may be un-
dermined.

Sect. 8. If any person be applied to by or on behalf of the said Company to sell any part of any house or building in the said town of for any of the purposes of this Act, and he signify his inclination to treat for the same, nothing in this Act shall be deemed to extend to compel such person to sell any thing less than the whole property.

Whole of pro-
perty to be
bought in cer-
tain cases.

Sect. 9. In case the said Company purchase any lands, tenements or hereditaments to the eastward of , within the said town of , the same shall be purchased subject to the performance of the several covenants, conditions and restrictions, contained in any existing lease; and it shall not be lawful for

Subject to co-
venants in
leases.

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Railway Act.**

the said Company to use or permit to be used any locomotive engine upon the said railway within the town of .

**Pavement not
to be taken up
without consent
of surveyor.**

Sect. 10. In case it be requisite to take up any of the pavement in the public streets or highways in the said town of the same shall not be done without the consent of the surveyors of the highways in writing for that purpose first had and obtained.

**Engines to con-
sume their own
smoke.**

Sect. 11. The furnace of every steam engine to be erected by the said Company, under the powers of this Act, shall be constructed on the principle of consuming its own smoke: Provided always that nothing in this Act contained shall authorize the said Company or their agents &c. to set up any fixed or permanent fire engine, steam engine upon any of the lands or grounds belonging to or within five hundred yards of the same: Provided also that every locomotive engine shall be con-

**On pain of for-
feiting 20*l*.**

structed upon the principle of consuming its own smoke; and the said Company or any person using any engine not consuming its own smoke shall be liable for every such offence to forfeit any sum not exceeding 20*l*. on conviction before two justices, the same to be levied as other penalties are by this Act directed to be levied and to be applied as the said two justices

**Notice to be
given previous
to complaint.**

direct: Provided always that no such conviction shall take place unless upon the previous complaint or information upon oath or solemn affirmation of some person, who, previous to such information, has given ten days' notice to the said Company or their clerk, or other person owning or using such engine as aforesaid; that the said complainant considers the same to be a nuisance affecting the house or land in his possession, and specifying the length of road along which the said complainant considers such house or land to be thereby af-

**Appeal against
conviction.**

fected: Provided also that every such conviction shall be filed at the next quarter sessions of the peace, unless such sessions be held within ten days after such conviction; in that case the same shall be filed at the quarter sessions next following; and the said Company or any persons thinking themselves aggrieved by such conviction shall be at liberty, within four calendar months after the same has been made, to appeal to any quarter sessions, giving ten days' notice in writing of their intention to appeal, and entering into a recognizance with two sufficient

sureties, conditioned to try such appeal, and abide the award and order of the court thereon; and the said justices shall determine whether such locomotive engine did at the time specified in the indictment consume its own smoke, and thereupon shall either quash or confirm such conviction, and mitigate any penalty, or order any money to be returned that has been levied in pursuance thereof, and such costs to be paid to the party in whose favour such appeal has been decided, as the said justices in their judgment think reasonable.

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Railway Act.

Sect. 12. Where the said railway &c. crosses any turnpike road or public highway, the ledge or flanch of such railway, for the purpose of guiding the wheels of the carriages, shall not rise above the level of the road or sink below the same more than one inch.

Crossings.

Sect. 13. Where any bridge is made for the purpose of carrying any railroad over any turnpike road &c. the arch of any such bridge shall leave a clear and open space under it of not less than fifteen feet, and the height from the surface of such road to the centre of the arch not less than sixteen feet. And where it is necessary to erect any bridge for carrying such road over any railway, the ascent of every such bridge shall not be more than thirteen feet; and a good and sufficient fence shall be made on each side of every such bridge not less than four feet above the surface of such bridge.

Bridges over
public roads.

Sect. 14. Where the railway crosses such roads on a level, the said Company shall erect and at all times maintain a sufficient gate on each side of such road, where the said railway communicates with the same, which gates shall be constantly kept shut, except at such times as carriages passing along the said railway have to cross such road, and then shall be opened only for the purpose of letting such carriages pass through.

Railway cross-
ing road on the
same level.

Sect. 15. Nothing herein contained shall authorize the said Company to take for the purposes of the said railway any land or ground set apart as a garden, orchard, yard, paddock, park, plantation, walk, or avenue to a house, without the consent of the owner, except such as are specified in schedule.

Houses and gar-
dens not to be
used, unless
specified in
schedule.

Sect. 16. In all cases where in the exercise of the powers hereby granted, any injury must be done to any road, public or private, so as to render it impassable or inconvenient, the said

Making a tem-
porary road.

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Railway Act.

Company shall not proceed to use such road until they have at their own expence caused a good and sufficient road to be set out instead thereof; and where the road is a turnpike road, the temporary road shall be so made and the principal road restored within six calendar months after the commencement of the operation; and the railroad, where it crosses such turnpike road, shall be kept in repair, so as to prevent obstruction to the passage along such road.

What lands to
be taken.

Sect. 17. The lands or grounds to be taken for the purposes of this Act shall not exceed yards in breadth, except in such places where it is judged necessary for engines or carriages to turn or pass each other, or to raise embankments, or to cross vallies or low grounds; and not above yards in any place, except at or near to the termination of the said lines within the townships of .

Sect. 18. Provisions as to bodies politic and persons under disabilities selling lands, see *ante*, No. XXIV. s. 17 *et seq.*

Sect. 19. Sum to be raised by the proprietors and to be divided into shares, see *ante*, No. XXIV. s. 38.

Company re-
quired to shew
that amount has
been subscribed
for.

Sect. 20. Provided always, in case the owner of or person interested in any lands, tenements, or hereditaments authorized to be taken by virtue of this Act, require the said Company to shew that the whole amount of the said sums has been subscribed as herein mentioned, the said Company shall and they are hereby required so to do by the production of a certificate in writing to that effect under the hand of any justice of the peace of the said county of , which certificate shall be deemed good evidence of the fact.

Sect. 21. Shares to be deemed personalty, see *ante*, No. XXIV. s. 39.

Sect. 22. Compelling payment of subscriptions, see *ante*, No. XXIV. s. 59.

Sect. 23. Mode of voting, see *ante*, No. XXIV. ss. 43—45.

Fraudulent as-
signments to
multiply votes.

Sect. 24. If any person or body politic fraudulently and collusively assign any shares to other persons in trust for them, for the purpose of obtaining a greater number of votes, he shall on conviction on the oath or affirmation of two witnesses before any two justices of the peace of the said county of forfeit the sum of £50.

Sect. 25. Names of proprietors to be entered, and certificate of their shares given to them, see *ante*, No. XXIV. s. 39.

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Sect. 26. Borrowing by way of mortgage, see *ante*, No. XXIV. s. 41 *et seq.*

Sect. 27. First and general meetings, see *ante*, No. XXIV. s. 46 *et seq.*

Sect. 28. The said Company at the said first general meeting, or at some meeting to be held by adjournment of the same, shall elect persons to be directors to manage the affairs of the said Company, three of whom, whether proprietors of this undertaking or not, shall be nominated by and the remaining , who shall be respectively possessed of or intitled to shares in their own right, shall be elected by the other proprietors present at the meeting, and they shall continue in office until the annual general meeting.

Sect. 29. Calling special meetings, see *ante*, No. XXIV. s. 50.

Sect. 30. Chairmen of directors, see *ante*, No. XXIV. ss. 51—54.

Sect. 31. Appointment of treasurer and clerk, see *ante*, No. XXIV. ss. 47, 48.

Sect. 32. Books of entry, see *ante*, No. XXIV. s. 47

Sect. 33. Provisions as to making calls and enforcing payments &c. see *ante*, No. XXIV. ss. 59—61.

Sect. 34. Selling shares by proprietors, see *ante*, No. XXIV. ss. 62, 63.

Sect. 35. Previously to any dividend being declared out of the net profits of the Company, it shall be lawful for the said directors and they are hereby empowered to set apart one-tenth of the same to form a fund for the purposes hereinafter mentioned, and the remaining nine-tenths only of such net profits shall be divisible among the proprietors: Provided always, that if at any time such net profits amount to the sum of £ , in such case the whole shall be divisible.

Fund for contingencies set apart from the net profits.

Sect. 36. And the said directors shall invest, in the names of three trustees, for and on behalf of the said Company, such one-tenth of the net profits, and from time to time lay out and invest the dividends and interest arising therefrom, until the fund so formed shall amount to the sum of £ , when the interest and dividends thereof shall no longer be invested, but

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be applied for the general purposes of the said Company : Provided always, that directors shall resort to reserved fund instead of making calls on proprietors.

Sect. 37. Regulations as to the acquisition of shares, see *ante*, No. XXIV. s. 64.

Sect. 38. Powers of directors, see *ante*, No. XXIV. s. 56.

Sect. 39. Directors may appoint committees under them, see *ante*, No. XXIV. s. 57.

Sect. 40. Accounting by officers, see *ante*, No. XXIV. s. 53.

Sect. 41. Provisions as to Company taking and recovering &c. rates, see *ante*, No. XXIV. ss. 66—75.

Sect. 42. And for the better ascertaining and more easily collecting the said rates, the owner or person having care of any carriage passing upon the said railway shall give to the collector an exact and true account in writing, signed by him, of the quantity of goods contained in such carriage, whence brought, and where intended to be unloaded or left ; and if the goods are liable to different rates, then the owner shall specify the quantities liable to each rate ; and in case he neglect or refuse to give such an account, or to produce a bill of lading, or he give a false account, or deliver a part of his lading at any other place than is mentioned in such account, with intent to evade the payment of the toll, every person so offending shall forfeit any sum not exceeding 40*s.* for every ton of goods of which an account is refused to be given or otherwise.

Weight of ton-
nage ascer-
tained.

Sect. 43. For better ascertaining the tonnage of goods to be charged with the payment of rates as aforesaid, one hundred and twelve pounds weight shall, for the purposes of this Act, be deemed to be one hundred weight, and twenty such hundred-weight to be one ton ; and for ascertaining the tonnage of stone and timber, fourteen (*or* "sixteen") cubic feet of stone, forty cubic feet of oak, mahogany, beech and ash, and fifty cubic feet of all other timber, shall, for the purposes of this Act, be deemed to be one ton weight.

Sect. 44. Provisions as to weighing carriages, see *ante*, No. XXIV. s. 77.

Sect. 45. Owners of waggon to put their names on the outside of waggon, see *ante*, No. XXIV. s. 86.

Sect. 46. Penalty on obstructing railway, destroying works, &c. see *ante*, No. XXIV. s. 88. No. XXVII.
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Sect. 47. The said Company shall, at their own costs and charges, make, set up and maintain from time to time all gates, bridges, culverts, fences, ditches, drains and passages, over, under, or by the side of any lands adjoining to the said railway, of such dimensions and in such manner as any two justices of the peace for the said county of shall judge necessary and appoint, (in case there is any dispute about the same,) for the use of the owner and occupier of the lands or grounds through which the said railway is made, and for protecting the said lands from trespasses or otherwise; and for the purpose of making such gates or other things, it shall be lawful for the said Company, their servants or agents, to enter upon the said lands with carts and horses, and to do all necessary acts thereupon; and in case the said Company neglect or refuse to make such gates &c. for the space of twenty days after the time fixed for doing the same by said justices, it shall be lawful for the owners or occupiers of such lands, who find themselves aggrieved by such refusal or neglect, to make such gates &c., and all the reasonable costs and charges thereof, to be settled and allowed by such two justices, shall be repaid to the said owner or occupier, and in default of payment shall be levied by distress and sale: Provided always, that if any of the owners or occupiers of the said lands apprehend that any such gates &c. so appointed by said justices, are insufficient in number or situation, it shall be lawful for such owners &c. after twenty-one days' notice given to the said Company, with the approbation of said justices, to make others and to maintain the same at their own costs and charges, as occasion requires, so that the passage through or along the said railway be not obstructed for any longer space of time, or in any other manner than the same would necessarily have been if such gates &c. had been made by the said Company: Provided also, that such owner &c. shall be at liberty to pass along the said railway, as far as their lands extend, without paying toll.

Sect. 48. Provision that railway shall be free on payment of tonnage, see *ante*, No. XXIV. s. 78: Provided always, that no person shall pass with any waggon or carriage, unless the same

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be constructed in such manner as shall be approved of by the engineer of the said Company.

Sect. 49. No waggon or other carriage shall carry at any one time along any part of the said railway, including the weight of such carriage, more than four tons weight, except in any one piece of timber, stone, or machinery, which nevertheless shall not exceed eight tons weight.

Sect. 50. The said Company shall and they are hereby required, at their own proper costs and charges, to divide and to keep constantly divided and separated all land, taken for the purposes of the said railway, from the adjoining lands or grounds, with good and sufficient rails, hedges, ditches, mounds and other fences, in case the owners or occupiers thereof respectively desire the same to be fenced off; and said Company shall also set up and maintain all necessary gates and stiles in such fences.

Sect. 51. All persons opening any gate set across said railroad shall shut the same after the carriage has passed through, on pain of forfeiting 40s. for every such offence.

Sect. 52. It shall be lawful for the owner and occupier of adjoining lands to lay down railways from their respective lands to communicate with the said railway, and the said Company shall be bound to make, at the expence of the said owners &c., openings in the ledges or flanches thereof convenient for effecting such communication: Provided always, that nothing in this Act shall extend to prevent the said owners &c. to make any railroad or tramroad across the said railroad, so as the same do no injury to or prevent the free passage along, over, or upon the same.

Sect. 53. The said Company shall and they are hereby required, at their own proper costs and charges, to make arches, tunnels, culverts, drains or other passages, over, under, or by the side of the said railroad, of sufficient dimensions to convey the water from lands adjoining thereto; and also to make proper watering places for cattle in all cases where, by means of the said railroad, the cattle of any person occupying such lands are deprived of their ancient watering place, and to supply the same at all times with water from such rivers, brooks, streams or springs of water, as would have supplied the cattle of such person if the said railway had not been made. And the said Company shall and are hereby authorized to make so many watercourses and

drains by the side of or under the said railway, or in, through, over and across any lands adjoining, of such dimensions and in such manner as any two justices of the county of or the town of shall judge from time to time to be necessary for supplying watering places with water; and all such arches &c. shall be cleansed, scoured, and maintained and kept in good and sufficient repair by the said Company; and it shall be lawful for any person to apply for an order from the two said justices, who are hereby authorized at their discretion to grant an order, enabling such person to make, cleanse and repair such arches, tunnels &c., and the reasonable expences thereof (to be ascertained by said justices) shall be defrayed by the said Company, and, in case of nonpayment by the said Company, may be levied and recovered by distress and sale.

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Sect. 54. In all cases where it is necessary to serve any notice, writ or other proceeding, upon the said Company, service upon any two [*or* "one"] of the directors, or upon the clerk or treasurer of the said Company, or left at the office or place of abode of the said clerk, shall be deemed good and sufficient service. And where it is necessary for the said Company to give any notice to any person or body politic, such notice may be signed by the said clerk, without being under the common seal of the said Company.

Service of notice &c on the Company.

Notice by the Company.

Sect. 55. If the said Company do not, within the space of five years from the passing of this Act, agree for and cause to be valued and paid for, as in this Act mentioned, any houses or buildings (*or* "any lands, tenements, and hereditaments,") for the purposes of making the said railway, in that case the powers given by this Act shall cease, determine, and be utterly null and void.

Sect. 56. Provision as to noncompletion of railway within seven years, see *ante*, No. XXIV. s. 104.

Sect. 57. If the said railway or tramroad, hereby authorized to be made, be abandoned by the said Company, and be not used for the space of three years, in such case the ground so purchased or taken by the said Company for the purposes of this Act shall vest in the owners of the adjoining lands in manner following, that is to say, one moiety thereof shall vest in the owner of the lands on one side, and the other moiety in

Provision in case of abandoning the railway undertaking.

No. XXVII.
Railway Act.

the owner of the lands on the other side ; and the said tunnel shall in such case revert to the corporation of the said town of ; and the said Company are hereby required, upon the request of the mayor, bailiff, and commonalty of the said town of , to take down and remove the walls of any of the eyes or openings into the said tunnel, and to arch over or fill up all cavities occasioned thereby ; and it shall be lawful for the said Company in such case to sell any houses, buildings, or lands purchased within the said town.

Sect. 58. Recovery of penalties, see *ante*, No. XXIV. s. 96, and power to apprehend offenders, *ib.* s. 97.

Sect. 59. Compelling attendance of witnesses &c. see *ante*, No. XXIV. ss. 99 —

Sect. 60. Distress not to be unlawful for irregularity, see *ante*, No. XXIV. s. 98.

Sect. 61. Limitation of actions, see *ante*, No. XXIV. s. 103.

ADMITTANCES.

No. XXVIII.
*Of a new
Tenant.*

No. XXVIII.

Admittance of a new Tenant to Copyholds.

Obs. 1. Admittance is the acceptance of a tenant, which gives an equitable but not a legal title ; therefore the admittance of a devise where the testator had not surrendered to the will, conferred no right in a court of law, *Doe dem. Vernon v. Vernon*, 7 E. 8. Admittance of a tenant for life is the admittance of a remainderman where there is no custom, *Barnes v. Cook*, 3 Lev. 308 ; *Dean of Ely v. Calcott*, 8 Bing. 439. So the admittance of joint tenants is as of a tenant, Kitch. 122 ; 1 Cov. Watk. Copyh. 338. So also, as it should seem, in the case of coparceners, 1 Cov. Watk. 339 ; *Rex v. Lord of the Manor of Bonsall*, 3 B. & C. 173.

2. By the 11 G. 4 & 1 W. 4, c. 65, s. 3, an infant by guardian or attorney, a feme covert by attorney, and a lunatic committee, may be admitted to copyholds. If in such cases the fine be not paid within three months after admittance, they may (by statute) be demanded by a note in writing, to be signed by the lord of the manor or his steward and left with the guardian of the infant, the

feme covert or her husband, and the committee of the lunatic, see *Abst. of the 11 G. 4 & 1 W. 4, c. 65, Append. No. V.* No. XXVIII.
Of a new
Tenant.

3. By the 55 G. 3, c. 184, an admittance requires a stamp of 1*l.* when the clear yearly value exceeds 20*l.*, but where it is under that value, a 5*s.* stamp, and also a further progressive duty of 1*l.* for every entire quantity of 1080 words above the first 1080, and when there is more than one admittance on the same piece of vellum or parchment, the proper duty to be paid in respect to each. The copy of court roll of any admittance requires the same duty. Stamp.

Manor of F. } Be it remembered that on the day of
in the county of . } 18 (*Tenant*) of &c. came in
his proper person (*a*) before me A. B. lord (*or* "steward") of
the manor of F. afd and prayed to be admitted to all and singular the customary messes lds tents and hereds situate lying and being within and pcl of the sd manor and all and singr or. the preses with the apts thereunto belonging to which sd preses the said (*T.*) became intituled as eldest son and hr at law of (*I. H.*) decd late a copyhold or customary tenant of this manor. To whom I the sd A. B. as lord of the sd manor personally granted seisin thereof by the rod (*or* To whom the lord of the sd manor by me his said steward granted &c.) To hold to him the sd (*T.*) and his hrs for ever by copy of court roll at the will of the lord or lords for the time being (*or, if the admittance be by the steward, say in the common form* "at the will of the lord") according to the custom of the sd manor by the several yearly rents and services therefore due and of right accustomed. And the sd (*T.*) gave to the lord for his fine £ but the fealty was respited (*b*). And so saving to the lord his right the sd (*T.*) was admitted tenant to the sd preses in manner and form afd

In the { S. S. A. B. lord (*or*
presence of } R. R. "steward") &c.

(*a*) Or in the case of an infant, feme covert or lunatic, "by C. D. of &c., gent., his (*or* her) guardian, (attorney *or* committee)."

(*b*) Where in the case of an infant, feme covert or lunatic, the fines are not paid on admittance, then omit this clause, and add "and so saving" &c. Exception.

AFFIDAVITS, AFFIRMATIONS OR DECLARATIONS.

- | | |
|---|---|
| <p>1. <i>Affirmations by Quakers, Moravians and Separatists.</i></p> <p>2. <i>Declarations substituted for Oaths and Affidavits.</i></p> <p>3. <i>Oaths &c. to be taken in Court.</i></p> | <p>4. <i>Voluntary Oaths abolished.</i></p> <p>5. <i>Declaration of attesting Witness.</i></p> <p>6. <i>Affidavits exempt from Stamp Duty or otherwise.</i></p> |
|---|---|

**Affirmations by
Quakers and
Moravians.**

Sect. 1. By the 3 & 4 W. 4, c. 49, amending and extending the 8 G. 1, c. 6, and 22 G. 2, c. 46, s. 36, Quakers and Moravians are permitted to make a solemn affirmation or declaration instead of an oath or affidavit in all cases where an oath is required, and falsely affirming is made punishable as perjury. By c. 82 of the same statute a similar provision is extended to a description of dissenters called Separatists, see further, Dig. and Ind. p. i. tit. **AFFIRMATIONS**; p. ii. tit. **QUAKERS**.

Separatists.

**Declarations
substituted for
oaths and affi-
davits.**

2. By the 5 & 6 W. 4, c. 62, provisions are made for abolishing oaths, affidavits and affirmations; by (s. 2) in all official matters relating to the excise, customs &c.; by (s. 9) in the case of churchwardens and sidesmen; by (s. 10) in the case of persons acting in turnpike trusts; by (s. 11) in taking out a patent; by (s. 12) in the case of pawnbrokers; by (s. 14) in transferring stock.

**Oaths &c. to be
taken in court.**

3. By (s. 7) of the last-mentioned statute, oaths and affirmations are to be administered, taken and made as before in all judicial proceedings in courts, or in any proceedings before magistrates by way of summary conviction.

**Voluntary oaths
abolished.**

4. By (s. 13) of the same statute, justices of the peace are not to administer or receive voluntary oaths or affidavits touching matters whereof they have no jurisdiction; but by (s. 18) any justice of the peace, or notary public, or other officer now by law authorized to administer an oath in confirmation of written instruments, or allegations, or proof of debts, or of the execution of deeds, may now take and receive the declaration of any person voluntarily making the same.

**Declaration of
attesting wit-
ness.**

5. By (s. 16) of the same statute, a declaration in writing by any attesting witness is to be sufficient to prove the execution of any will or codicil.

**Affidavits ex-
empt from stamp
duty or other-
wise.**

6. By the 55 G. 3, c. 184, affidavits not made for the immediate purpose of being filed or used in any court of law or equity, are liable to the stamp of 2s. 6d. for every sheet, or piece of paper, parchment or vellum, on which the same shall be written or authorized by law.

It is presumed that declarations being substituted for affidavits will be liable to the same stamp duty. As to the limit of the exemption of affidavits from the stamp duty, see 4 & 5 V. c. 34 (Dig. p. iii. tit. LAW PROCEEDINGS).

No. XXIX.

Affidavit on the Grant of Administration with the Will annexed.

No. XXIX.
Administration.

Obs. As to the different kinds of administration, and the affidavits required by the Stamp Acts, see Dig. p. ii. tit. ADMINISTRATION, EXECUTORS.

A. B. (a) of &c. maketh oath and saith that the paper writing now produced by this deponent (b), for the purpose of being proved, to the best of this deponent's belief (c) is and contains the last will and testament of C. D., late of in the county of , deceased, who, as this deponent has been informed and believes, departed this life on or about the day of last past, and was buried on or about day of next thereafter, at in the same county (*or as the case may be*); and this deponent further saith, that the personal estate and effects of the said testator, to which he was intitled at the time of his death beneficially, and without making any deduction or allowance by reason or on account of the debts or lawful demands of or upon the said testator, are under the amount or value of £ .

Sworn (d) &c.

(a) If it be a Quaker or Moravian, see Pref. s. 1, say, "I, A. B. of &c. being one of the people called Quakers (*or* "one of the persuasion of the United Brethren called Moravians,") do upon this solemn affirmation made according to the rites of my religion declare that," &c. If it be a Separatist, say, "I, A. B. of &c. do in presence of Almighty God solemnly, sincerely, and truly affirm and declare that I am a member of the religious sect called Separatists, and that the taking an oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect: And I do also declare in the same solemn manner that I this affirmant did," &c.

(b) "By me this affirmant."

(c) "Of my, this affirmant's, belief."

(d) "Affirmed."

No. XXX.
Of a Creditor.

No. XXX.

Affidavit of a Creditor on applying for Letters of Administration where the Executor is abroad.

Obs. By the 38 G. 3, c. 87, s. 2, it is provided, that at the end of twelve calendar months after the death of a testator, if the executor is out of the jurisdiction of the courts, special administration may be granted upon the application of any creditor, next of kin or legatee, grounded upon an affidavit to the effect following, see Dig. p. ii. tit. ADMINISTRATION.

A. B., of &c. (a), maketh oath, that there is due and owing to him on bond (or "simple contract," or "account stated," as the case may be), from the estate and effects of late of _____, deceased, to the best of his belief the sum of £ _____ (b), and that C. B., the only executor capable of acting, and to whom probate has been granted, has departed this kingdom, and is now out of the jurisdiction of her Majesty's courts of law and equity, and that this deponent is desirous of (c) exhibiting a bill in her Majesty's court of _____, for the purpose of being paid his demand out of the assets of the said testator.

(Deponent.)



No. XXXI.
*By an Executor
or Administrator.*

No. XXXI.

Affidavit by an Executor or Administrator of Deficiency of Assets, in order to obtain a Return of Duty.

Obs. This affidavit is required by 55 G. 3, c. 184, s. 51, see Dig. p. ii. tit. ADMINISTRATION.

A. B., of &c., maketh oath, that probate of the last will of

(a) As to the form where it is a Quaker, Moravian or Separatist, see *ante*, Pref. s. 1.

(b) Where it is a next of kin or legatee, instead of the affidavit of debt, say "A. B. &c. maketh oath &c. that he is the next of kin of &c.," or "a legatee named in the will of &c."

(c) Where it is a next of kin or legatee "of administering to the estate and effects of &c. for the purpose of obtaining his share of the same," or "of obtaining the legacy given to him by the said will."

(*testator*) [*or* “ letters of administration of the estate and effects of (*intestate*)”], deceased, was [*or* “ were”] granted to him, and that the estate and effects of him the said &c. was sworn to be under the value of £ , and a stamp duty of £ was paid thereon; and this deponent furr saith that the schedule hereunto annexed and subscribed by him doth contain a true and full account of the goods, chattels and personal estate of , to the best of this deponent’s knowledge and belief; and this deponent furr saith, that such goods &c. do not, as he verily believes, exceed the amount of , and he hath actually paid debts justly due and owing from the deceased at the time of his death to the full amount of £ , which, being deducted from the value of the goods, doth reduce the same to the amount of £ .

No. XXXI.
*By an Executor
or Administrator*

—◆—
No. XXXII.

Affidavit of the Execution of Deed of Submission to Arbitration.

No. XXXII.
*Arbitration
(Deed of Submission).*

Obs. Before an award can be enforced under 9 & 10 W. 3, c. 15 (see Dig. p. ii. tit. ARBITRATION), the submission must be made a rule of court, for which purpose there must be an affidavit of the execution of the deed of submission by one of the witnesses; and where there are several parties to the deed, it must be shewn that all have executed the deed, *Antram v. Chace*, 15 E. 209; and see *Biddel v. Dorset*, 6 B. & C. 255. As to the exemption from the stamp duty, see Pref. 6.

In the Q. B. (*or other court of which the submission is to be made a rule.*)

A. B. of &c. maketh oath and saith, that he was present at the execution of the bond or obligation (*or* “ agreement,” *as the case may be*), hereunto annexed, and made or expressed to be made by E. H. of &c. therein mentioned, and did see him duly sign and seal, and as his act and deed deliver, the said bond or obligation; and that the names E. H. and A. B. set and subscribed thereto are respectively the proper handwriting of the said E. H. and this deponent.



No. XXXIII.
Award
(Enlargement
of Time).

No. XXXIII.

Affidavit of Enlargement of Time.

Obs. An affidavit verifying the fact that the arbitrator has enlarged the time, according to the power given to him, and also that the defendant had notice of such enlargement, is necessary to ground an attachment upon for nonfulfilment of the award, *Davis v. Van*, 15 E. 97.

In the Q. B. &c. (see *last precedent*.)

A. B. of &c. maketh oath and saith, that the time for making the award hereunto annexed was duly enlarged to the day of last, as appears by an indorsement on the sd bond or obligation, and the said award, as he the sd deponent verily believes, was made within the time limited for making the same. And this deponent furr saith, that at the time of demanding payment of the sum of £ so awarded the sd (defendant) had notice that the time for making the sd award had been enlarged, and that the said award was made as afore-said.

Sworn &c.

No. XXXIV.
Articles of
Clerkship,
(Execution).

No. XXXIV.

Affidavit of the Execution of Articles of Clerkship.

Obs. 1. This affidavit must be made by one of the subscribing witnesses, and sworn before a judge of that court of which the attorney is admitted, within three months after the execution of the articles. There is the like restriction as to time on the assignment of articles. See Dig. p. ii. ATTORNIES; p. iii. tit. SOLICITORS.

2. As to affidavits in judicial proceedings, see Pref. s. 6.

A. B. of &c. maketh oath and saith That he this dept did see H. H. gent. one of the atties of her Maj. Ct of Q. B. (or "C. P.") at Westminster, and T. F. of &c. severally sign and seal as their several acts and deeds in due form of law and deliver certain articles of agrt indented bearing date the day of last past and made betn the sd H. H. of the one pt and the sd T. F. of the or. pt whby it was agrd that the sd T. F. shd well and truly serve the sd H. H. as his clk in the business pro-

No. XXXVI.
Articles
(Service under).

No. XXXVI.
Of Service under Articles.

Obs. As to affidavits, see Pref. s. 1; and as to Quakers, see *first Affidavit*, No. XXIX.

A. B. of &c. gent maketh oath and saith That he hath really and truly served and been employed by C. D. of &c. gent. as his clk in the practice of an attorney and solicitor for the full term of five years pursuant to the articles hereunto annexed. *And* this deponent further saith That he did previous to last term affix the name and place of abode of him this dept and also the name and place of abode of the said C. D. his master in the Queen's Bench Office and on the outside of the Court of Q. B. in Westminster, and that he did also previous to the same term likewise enter the name and place of abode of the sd A. B. in the book kept for that purpose at the chambers of each of the judges of her Maj. Ct of Q. B.

Sworn &c.



No. XXXVII.
Certificate
(verifying).

No. XXXVII.

Affidavit verifying Certificate of Acknowledgment made by a Married Woman.

Contents of the
affidavit.

Obs. 1. By R. G. H. T. 4 W. 4, 1834, revoking and amending the Rules of Michaelmas Term, 1833, the following affidavit, except where the acknowledgment is taken elsewhere than in *England, Wales, or Berwick-upon-Tweed*, is directed to be made by some practising attorney or solicitor of one of the Courts at *Westminster*, or of one of the Counties Palatine of *Lancaster* or *Durham*, and in all cases it shall be deposed, in addition to the verification of the said certificate, that the deponent (*or if more than one person join in the affidavit*, that one or more of the deponents) knew the person or persons making such acknowledgment, and that at the time of making such acknowledgment the person or persons making the same were of full age and competent understanding; and that one at least of the commissioners taking such acknowledgment, to the best of his knowledge and belief, is not in any manner interested in the transaction giving occasion for the taking such acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent, so interested or concerned; and that

the names and residences of the said commissioners, and also the place or places where such acknowledgment or acknowledgments are taken, shall be set forth in such affidavit; and that previously to such acknowledgment being taken, the deponent had inquired of such married woman (*or if more than one*, of each such married woman) whether she intended to give up her interest in the estate to be passed, and also the answer given thereto; and where any such married woman, in answer to such inquiry, declares that she intends to give up her interest without any provision, the deponent shall state that he has no reason to doubt the truth of such declaration, and verily believes the same to be true. And where any provisions has been agreed to be made, the deponent shall state that the same has been made by deed or writing, or if not actually made before, that the terms of the intended provision have been reduced into writing; which deed or writing he verily believes has been produced to the said judge (master, or commissioners).

No. XXXVII.
Certificate
(*verifying*).

2. AND IT IS HEREBY FURTHER ORDERED, that every affidavit shall state the parish or parishes, or place or several places, and the county or counties, in which the several premises, wherein any such married woman appears to be interested, shall by deed be described to be situate

Affidavit must
state parish or
place, and
county.

3. AND IT IS HEREBY FURTHER ORDERED, that the affidavit shall be in the form hereunto annexed, subject to such variations as the circumstances of the case render necessary, or such affidavit may be made, where it is found convenient, by one of the said commissioners, with such variations in the form thereof as shall be necessary in that behalf.

Form of affi-
davit.

4. Affidavits of this description require to be stamped, being made in no suit, *Ex parte Branson*, 4 Scott, 539; see *Gen. Obs. supra*.

Stamp.

In the Common Pleas

A. B. (a) of &c. in the co. of gent. one of the attornies or solicitors of &c. maketh oath and saith that he knows M. the wife of R. L. (b) in the certificate hereunto annexed mentd and

(a) Where more than one join in the affidavit, " A. B. of &c. in the county of (*here state trade, profession, or calling*), and C. D. of , in the county of , gent. one of the attornies (*or "solicitors"*) of the Court of severally make oath and say, and first this deponent A. B. for himself maketh oath and saith, that he knows M. the wife of R. L." As to the form in the case of Quakers, &c. see *ante*, No. XXIX. n. (a).

(b) If more than one married woman, " and L. the wife of R. S."

No. XXXVII.
Certificate
(verifying).

that the acknowledgment therein mentd was made by the sd M. L. and the certificate signed by the judge (or "master" or "A. B. and C. D. the commissioners in the sd certificate mentd") on the day and in the year therein mentd at in the county of in the presence of this deponent, and that at the time of making such acknowledgment the sd M. L. was of full age and competent understanding and that the sd M. L. knew that the acknowledgment was intended to pass her estate in the preses respecting which such acknowledgment was made (a) And this deponent furr saith that previous to the sd M. L. (b) making the sd acknowledgment he this deponent inquired of the sd M. L. whether she intended to give up her int in the estes in respect of which such acknowledgment was taken witht having any provision made for her in lieu of or in return for or in consequence of her so giving up her int in such estes. And that in answer to such inquiry the sd (c) M. L. decl'd that she did intend to give up her int in the sd estes witht having any provision made for or in consequence of her giving up such int of which declaration of the sd M. L. (d) the sd deponent has no reason to doubt the truth and verily believes the same to be true (e) And lastly this deponent saith that it appears by the deed acknowledged by the sd M. L. that the preses wherein she is stated to be interested are described to be in the parish or place (or "parishes or places") of in the county (or counties) of &c (as the case may be)

(a) When the acknowledgment is not taken by a judge or master, add "And this deponent furr saith that to the best of his deponent's knowledge and belief neither of the sd commissioners is (or 'the sd A. B.' or 'the sd C. D. is not') in any manner interested in the transaction giving occasion for such acknowledgment or concerned therein as attorney solicitor or agent or as clerk to any attorney solicitor or agent so interested or concerned."

(b) If more than one married woman, say "the sd M. L. or L. S. making this acknowledgment he this deponent inquired of each of them the sd M. and L. whether she &c."

(c) Or "each of them the sd M. L. and L. S. declared" &c.

(d) Or "of each of them the sd M. L. and L. S."

(e) Or "decl'd that a provision was to be made for her in consequence of her giving up her int in such estes And this deponent furr saith that before her acknowledgment was so taken he was satisfied and does now verily believe that such provision has been made by deed or writing (or 'that the terms thereof have been reduced into writing') And that such deed or writing has been produced to the sd Judge (or 'Master' or 'Commissioners')."

No. XXXVIII.

Affidavit of a Debt.

No. XXXVIII.

Affidavit of a Debt.

Requisites of the affidavit.

Obs. 1. An affidavit of a debt, so far as it concerns commercial or general purposes, ought, 1. To be made by a credible person, not one convicted of any felony, *Bland v. Drake*, 1 Chitt. 165; but see 7 & 8 G. 4, c. 28, as to the effect of a pardon, Dig. and Ind. p. i. PARDON. 2. By R. H. Gen. 2 W. 4, *reg.* 1, s. 5, the addition of every person making an affidavit of debt must be inserted therein, and deponent describing himself as A. B., clerk to C. D., is not sufficient, *Daniels v. May*, 5 D. P. C. 83. This rule is a confirmation of an old rule, under which it was held that the affidavit must contain the state and degree of the plaintiff in order to hold the defendant to bail, *Jarrett v. Dillon*, 1 East, 18; but if it state the place where he carries on his business it is sufficient, and need not give his place of abode, *Haslope v. Thorne*, 1 M. & S. 103. 3. It is now settled (though formerly doubted) that it need not be made by the party himself, it being sufficient if made by any person who can swear to the existence of the debt, *Bland v. Drake*, *ub. sup.*, overruling *Claphamson v. Bowman*, 2 Stra. 1226; *Vanmorral v. Julian*, 1 Wils. 231; and the affidavit need not state that the deponent was connected with the plaintiff as agent or otherwise, *Anderson v. Morgan*, 4 Taunt. 231. 4. The affidavit must be positive as to the fact of the debt; stating "as appears by the plaintiff's ledger," and the like, is not sufficient, *Fowler v. Morton*, 2 B. & P. 48; but an executor or administrator may swear to the best of his belief, *Sheldon v. Baker*, 1 T. R. 84; *Lowe v. Farley*, 1 Chitt. 92. 5. The cause of action must be explicit; an affidavit of debt on an award must state the fact of submission to the award, and that the money was due on a day that is now past, *Anon.* 1 D. P. C. 5; so an affidavit of debt, founded on an agreement, must state the consideration for the agreement, *Walker v. Gregory*, 1 D. P. C. 24; and if for money paid, that the same was paid at the request, as well as on account of the defendant, *Marshall v. Davison*, 2 Tyrw. 315.

2. Of the requisites of affidavits to be used in courts, see Dig. p. ii. tit. AFFIDAVITS and the authorities there cited.

Requisites of affidavits when used in courts.

3. Affidavits of a debt come properly within the exemption from the stamp duty provided for by 55 G. 3, c. 134; see *ante*, Pref. s. 6, p. 98.

A. B. of &c. (or "clerk &c." or "apprentice &c. v. A. B."), maketh oath and saith that the bill or account herewith annexed, of goods or articles expressed to have been delivered v.

No. XXXVIII. *C. D.*, is a true copy or transcript of the ledger book of him the said A. B. or of his ("clerk," "apprentice &c.") entered by him the said deponent, and that the goods were ordered by and delivered to the said C. D. by this deponent at or about the time in the said bill or account mentioned, and which he verily believes the said C. D. received. And further, that he this deponent did, on or about the day of , deliver a true copy of the account from the said A. B. unto (or "at the counting-house" or "dwelling-house of") the said C. D., and that he did then and there see the said C. D., who thereupon promised to pay the same forthwith (or otherwise, as the case was), and that he this deponent hath not, nor any other person to his knowledge or belief, received or been tendered the amount thereof (or "has received the sum of £ and no more towards the amount thereof").

Sworn &c.

(Deponent.)

No. XXXIX.

*Execution of
Deeds.*

No. XXXIX.

*Affidavit of the Execution of the Memorial of a Deed by
one of the Witnesses.*

Required by
the Registry
Acts.

Obs. 1. This affidavit is required by the 2 & 3 A. c. 4, for the W. Rid. of Yorkshire; 5 & 6 A. c. 35, for the E. Rid.; 7 A. c. 20, for Middlesex; and 8 G. 2, c. 6, for the N. Rid.; see Dig. and Ind. p. i. tit. INROLMENT. By the 5 & 6 W. 4, c. 82, the execution of a deed may be proved by a declaration instead of an affidavit, see Pref. s. 2, ante, p. 98.

2. As to whether this affidavit requires a stamp, see Pref. s. 6, ante, p. 98.

A. B. [a witness to the execution of the memorial, and of the deed memorialized] of in the county maketh oath and saith that he was present and did see the indre, bearing date &c. referred to in the memorial hereunto annexed, duly exted by C. D. (*grantor*) [or E. F. (*grantee*)] of in the county one of the parties to the same indre. And this deponent further saith that he was present and did see the memorial hereunto annexed duly signed and sealed by the said C. D. (or E. F.) And that the names of this deponent and of (*other witnesses to the memorial*) in the county of set

and subscribed to the said memorial, as the witnesses to the execution thereof by the said C. D. (*or* E. F.) are of the respective proper handwriting of this deponent and of the said (*other witnesses*).

No. XXXIX.
*Execution of
Deeds.*

(*Deponent* A. B.)

Sworn at the public office (*a*), Southampton
Buildings, the day of , before me,
G. H.

—◆—
No. XL.

Affidavit of Service of a Petition and Order.

No. XL.
*Petition,
(Service).*

Obs. As to affidavits, see Pref. s. 1; and as to Quakers &c., see *ante*, No. XXIX. n. (*a*).

In Chancery.

In the matter of T. B. a lunatic.

G. F. of &c. maketh oath and saith That he this dept did on the day of inst personally deliver to M. B. cousin and next heir of the said T. B. and H. S. aunt of the sd T. B. respectively a true copy of the petition and order thereon hereinafter mentioned which said petition appears to this dept to have been preferred to the Ld High Chancellor of Gt Britain by S. S. of &c. I. H. of &c. and W. T. of &c. devisees in trust for the sd T. B. the lunatic named in the will of the sd lunatic's father N. B. late of &c. and also persons appointed in and by the sd will to have the care and custody of the sd T. B. *And* it was thereby prayed that it might be referred to one of the Masters of the Ct of Chancery to approve of one or more psn or psns to have the care and custody of the psn and este of the sd lunatic they giving such security as is usual in like cases. *And* the sd order appears to this deponent to have been made by the sd Ld High Chancellor and bears date the &c. *And* by such order the sd Ld H. C. directs all pties concerned to attend him in the matter of the sd petition on the next day of petitions and notice thereof to be given forthwith.

Sworn &c.

(*a*) This is an affidavit of a memorial in Middlesex.

No. XLI.
Declaration,
(Spoiled
Stamps).

No. XLI.

Declaration to be made for the Allowance of Spoiled Stamps.

Obs. As it is presumed that this is one of those official oath affidavits for which a declaration may be substituted, the following has been given in that form. See Pref. s. 2.

I, T. M. of &c. gent. in ptnshp with S. T. R. of the same p &c. atties in her Majesty's Court of at Westminster solemnly and sincerely declare That the following stamps three indres at 35s each one second of 15s one second of 7 on parchment two affidavit stamps on paper of &c. five stamps &c. amounting in the whole to £ are the prop of me the sd declarant and my sd ptnr. And that I this declarant and my sd ptnr have pd the full value for the same that they have been spoiled or become useless in our sd profession and that we have not charged and do not mean to charge the same or any of them to any psn or psns wh And unless the same are allowed to me this declarant and my sd ptnr I this declarant and my sd ptnr will be losers to full amount thof.

Declared by the above-named declarant T. M. }
the day of 18 before }

No. XLII.
Declaration,
(Debt).

No. XLII.

Declaration of a Debt due to a Widow, Administratrix of her Husband.

Obs. As to where voluntary declarations may or may not be made see Pref. s. 4; and as to stamp, see Pref. s. 6.

I, E. G. of &c. widow and administratrix of all and sing the goods and chattels rights and credits which were of H late of &c. mercht my late husband deceased at the time of death do solemnly and sincerely declare That T. S. late of mercht is justly and truly indebted unto me this declarant administratrix as afd in the sum of £ of lful money of Britain for a total loss of £ per centum on the said T. subscription of 100l. made and entered into before the date of suing forth of the sd commission on a certain policy of in

rance effected by the orders and for the acct of the said H. G. in his lifetime on goods and merchandise belonging to the said H. G. shipped on board the ship bound on a voyage from to in which the sd ship and her cargo in the prosecution of the sd voyage was lost on the coast of as I this declarant have been informed and believe for which said sum of £ or any part thereof I this declarant have not nor to my knowledge or belief have or hath any or. psn or psns for my use received nor did the said H. G. in his lifetime or any or. psn or psns for his use to the knowledge and belief of me this declarant receive any satisfaction or security whatsoever save and except the said policies of insurance.

Declared &c. (see No. XLI.)

No. XLII.
*Declaration,
(Debt).*

No. XLIII.

Declaration of the Execution of Deeds.

No. XLIII.
*Declaration,
(Execution of
Deeds).*

Obs. As to voluntary declarations in proof of the execution of deeds, see Pref. s. 4; and as to the stamp, see Pref. s. 6.

I, A. B. of &c. do solemnly and sincerely declare that I this declarant did see the parchment writings or indentures hereunto annexed bearing date &c. and also one other writing bearing date &c. and made or expssed to be made betn &c. sealed and delivered by C. D. &c. in the sd writings named and that I the sd declarant subscribed my name to each of the sd writings as a witness to the exon and delivery thof resply.

Declared &c.

No. XLIV.

Declaration of an attesting Witness to a Will.

No. XLIV.
*Declaration,
(Attesting
Witness).*

Obs. As to declarations to be made by attesting witnesses, see Pref. s. 5; and as to the stamp, see Pref. s. 6.

I, A. B. of &c. do solemnly and sincerely declare That I was present and did see C. D. late of &c. decd in due form of law seal publish and declare his last will and testament in writing

No. XLIV.
Declaration,
(Attesting
Witness).

bearing date &c. and that I this declarant subscribed my name as a witness thereto. And I this declarant do furr declare that I do verily believe the parchment writing with the probate of a will thereto annexed under the seal of the Prerogative Ct of the Archbishop of Canterbury to be a true copy of the last will &c. of the sd C. D. deceased having compared the same with the draft from which such will so signed sealed and published as afd was engrossed. And I this declarant do furr declare that I have heard and believe that the sd C. D. departed this life on or about the day of 18

Declared &c.

AGREEMENTS.

- | | |
|---------------------------------------|--|
| 1. <i>Definition of an Agreement.</i> | 7. <i>Consideration for the Agreement.</i> |
| 2. <i>Parties to an Agreement.</i> | 8. <i>Construction of Agreements at Law and in Equity.</i> |
| 3. <i>Subjects of an Agreement.</i> | 9. <i>Penalty Clause.</i> |
| 4. <i>Form of an Agreement.</i> | 10. <i>Stamping Agreements.</i> |
| <i>Deeds and Parol Agreements.</i> | 11. <i>Different kinds of Agreements.</i> |
| 5. <i>Signing an Agreement.</i> | |
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Definition of an
agreement.

SECT. 1. An agreement, in its most extensive sense, is defined to be the consent of two or more persons in constituting or dissolving some legal obligation, and in that sense includes every species of assurance; but, in a more limited acceptation of the term, it implies any memorandum, articles or minutes, entered into between two or more persons, either to serve as a deed of itself, or as preparatory to some more formal instrument, 1 Bac. Ab. 67.

Parties to an
agreement.

2. No one can enter into an agreement who has not discretion, or the power of using it; therefore idiots, lunatics, infants, married women, and persons under any duress or restraint, are in general incapable of contracting, Perk. 12, 16; 4 Co. 124; 5 ib. 119; Sheph. Touch. 39; *Harris v. Lee*, 1 P. Wms. 483; 1 Atk. 409; 1 Fonb. Eq. 68. But the law allows infants to make contracts, with power to vacate them if they prove prejudicial; and a contract by an infant for necessities is absolutely binding, Co. Litt. 172 a; 2 Sid. 109; 1 Lev. 86; *Truman v. Hurst*, 1 T. R. 41. And by the 9 G. 4, c. 14, s. 5, agreements or promises made in infancy must be confirmed by writing when the party comes of full age. By the 1 G. 1, c. 10, for the maintenance of the poor clergy, agreements entered into by guardians

or infants and idiots were to be valid; but now, by 3 & 4 W. 4, s. 26, such agreements may now be made by guardians in case of infants, with the approbation of the Court of Chancery, and in the case of lunatics by their committees, with the consent of the Lord Chancellor. And by 6 & 7 W. 4, c. 115, guardians, committees and husbands are empowered to enter into agreements for making enclosures for infants, lunatics, and femmes covert. In many cases a married woman is competent to contract as if she were sole, *Norton v. Turvill*, 2 P. Wms. 144; *Grigby v. Cox*, 1 Ves. 517; 1 Fonb. Eq. 91; see further as to infants, Dig. p. iii. tit. GUARDIAN AND INFANT; as to married women, Dig. p. iii. tit. HUSBAND AND WIFE. The executors and administrators of a party are usually named in an agreement; but this is not necessary in order to bind his assets, as his representatives are, by intendment of law, included in his person, *Hyde v. Skinner*, 2 P. Wms. 270. But the word "heirs" must not be omitted when the real estate of the party is intended to be bound, Plowd. 439; 2 Saund. 136.

3. Generally speaking, every kind of right or interest, whether of a real, personal, or mixed nature, may be the subject of an agreement; but it is requisite that it be within the power of the party contracting, Plowd. 12, 43; Bac. Max. c. 77. And it must also be such as is not forbidden by the rules of religion and morality, or by the laws of the land, Hob. 132; *Morse v. Royal*, 12 Ves. 371; *Du Bost v. Beresford*, 2 Campb. 511; 1 Fonb. Eq. 223. An agreement may either be executed at the beginning, as where money is paid for the thing agreed for, or it may be executory, where it is to be done at some future time, Bac. Max. 78, 79; Dy. 221.

4. Every agreement, to be effectual, ought to be full and complete, and so framed as to express with clearness and precision the stipulations and terms of the contract, Plowd. 5. Agreements ought to be in writing, otherwise, by the Statute of Frauds, 29 Car. 2, c. 3, they will not be valid. Executory contracts have been held in some cases not to be within the statute, *Clayton v. Andrews*, 4 Burr. 210; *Alexander v. Comber*, 1 H. Bl. 20; *secus*, in other cases, *Rondeau v. Wyatt*, 2 H. Bl. 68; *Garbut v. Watson*, 1 D. & R. 219; and now the 9 G. 4, c. 14, s. 7, has removed all doubts, by extending the provision of 29 Car. 2 to all executory contracts. Agreements need not be under both the hand and seal of the parties. A letter takes an agreement out of the statute, not only in consideration of marriage, but also in respect to lands, *Ford v. Compton*, 2 B. C. C. 32. Where agreements are under the hand and seal of the parties, they are, as to the subject matter, sometimes called *special contracts* or *specialties*.

Agreements.

Deeds.

Parol agreements.

and as to the instrument, *deeds*; but where they are verbal, or only in writing under the signature of the parties, they are termed parol agreements, or absolutely agreements, Sugd. Vend. & Pur. 9th edit. 99; see also 1 Sugd. Vend. & Pur. 10th ed. chap. iii., and Dig. p. ii. tit. FRAUDS, (STATUTE.) The former kind of agreements are binding on the heir of the parties if named, but the latter on the representatives only, 2 Wms. Saund. 7, n.; 4 ib. 136; *Wilson v. Knubley*, 7 E. 128. An action might formerly be sustained upon a contract under seal at any period of time; but by the 3 & 4 W. 4, c. 42, s. 3, actions of debt or covenant on bonds, or other specialties, must be brought within twenty years after cause of action arises; actions upon parol agreements must be brought within six years after the cause of action arises, *Jones v. Pope*, 1 Wms. Saund. 37. So an agreement by parol cannot dispense with, alter, or control a deed, *Sellers v. Beckford*, 8 Taunt. 31, S. C.; 1 B. Moore, 460; (see further as to agreements, parol or by deed, BOND, CHARTER-PARTY, DEFEASANCE, LEASE, PARTITION.)

Signing an agreement.

5. Signing is, by the Statute of Frauds, one requisite to the validity of an agreement; but as a signature by one of the parties will be binding only on the party signing, it is important for both parties to sign, in order to give full efficacy to the contract, 2 Ch. Ca. 164; *Champion v. Plummer*, 1 N. Rep. 254; *Cooper v. Smith*, 15 E. 103; *Phillimore v. Barry*, 1 Campb. 513; *Symmons v. Want*, 2 Stark. 371. The signature of an authorized agent, even though not authorized in writing, but verbally only, will bind his principal, *Mortlock v. Buller*, 10 Ves. 311; *Wilson v. Hart*, 7 Taunt. 295; *Clinan v. Cooke*, Sch. & Lef. 31, 32. A cross made by one who is not able to write, is a sufficient signing; and if a man be in the habit of printing or stamping his name, he will be considered to have signed by his printed name, 1 Sugd. Pow. 6th edit. 30; *Saunderson v. Jackson*, 2 B. & P. 238; *Schneider v. Norris*, 2 M. & S. 286. Where an agreement is signed by an attorney or authorized agent, he must sign in the name of his principal, not in his own name, 2 Ld. Raym. 1418; *White v. Cuyler*, 6 T. R. 176; *Wilks v. Back*, 2 E. 142; *Coles v. Tricothick*, 9 Ves. 234. The signature required by the statute need not be in any particular part of the instrument, 1 Sugd. V. & P. 10th edit. 180 *et seq.* But it has been held, that inserting the name in the middle of a writing cannot have the effect of a legal signature, *Hawkins v. Holmes*, 1 P. Wms. 770; *Stokes v. Moore*, 1 Cox, 219. As to the attestation or signing in the presence of witnesses, this is necessary for preserving the evidence of the deed, 1 Lev. 25; 1 Sid. 37. And in regard to deeds made in pursuance of powers, where the

Attestation of an agreement.

power requires attestation, a deed will be void at law, where there is no mention of such attestation, 1 Sugd. Pow. 6th edit. 302. Agreements.

6. Recitals are not an essential part of a deed, but they are nevertheless proper, as they serve to control, extend, or explain the meaning of general words, *Lampon v. Corke*, 5 B. & A. 606; *Payler v. Homersham*, 4 M. & S. 423; (see also BONDS, RELEASES.) Where a recital is made, it is necessary that it should be correct; thus in an assignment of a lease, if the date of the lease be misrecited, as the 1st of May for the 2nd of May, the assignment will be void. To obviate the consequence of such errors, it is now usual to recite deeds as "bearing date on or about the" &c., Sheph. Touch. 77, Preston's edit.; (see further, RECITALS.) Recitals in an agreement.

7. Some consideration or other is absolutely necessary to support an agreement, otherwise it is held to be a *nudum pactum*, and void at law, Plowd. 308; Dy. 336; *Jones v. Ashburnham*, 4 East, 455; *Parker v. Bayliss*, 2 B. & P. 73. So if the consideration be the doing that which the law prohibits, or which is offensive to decency or good morals, it will be void, *Martyn v. Blithman*, Yelv. 197. But any reasonable consideration, however small, will be deemed sufficient, Dy. 272; 1 Roll. Abr. 22, 23; *Williamson v. Clements*, 1 Taunt. 523. And if the agreement be under seal, no consideration need appear on the face of the deed; but parol agreements are not allowed to be conclusive evidence of a sufficient consideration, *Pellias v. Microp*, 3 Burr. 1670; *Rann v. Hughes*, cited 7 T. R. 350, n.; 1 Fonbl. Eq. 342, 347; (see further, as to the consideration, AGREEMENTS for the Sale of an Estate, BARGAIN AND SALE, BOND, GIFT, SETTLEMENT.) Consideration for an agreement.

8. The construction of deeds and agreements is the same in equity as at law, but the performance required in a court of equity and that of law is different. At law, a covenant must be strictly and literally performed; in equity, it must be really and substantially performed, *Eaton v. Lyon*, 3 Ves. 692. Equity will relieve against a strict performance upon equitable circumstances, where there is no wilful neglect and misconduct, and will also enforce the performance of fair and reasonable contracts, even although they be by parol, where the party wants the thing in specie, 2 Freem. 268; 2 Vern. 455; *Gunter v. Halsey*, Amb. 586; *Errington v. Annesley*, 2 B. C. C. 443. But if the contract can be and is intended to be compensated by damages, courts of equity will not interpose, 1 P. Wms. 570; *Capper v. Harris*, Bumb. 135. Construction of agreements in equity and at law.

9. In contracts of an executory kind, a clause is usually inserted, Penalty clause. stipulating for the payment of a sum of money, either by way of

Agreements.

penalty or for liquidated or ascertained damages, in case of violation of any of the articles of the contract by either party. The latter mode by which the parties themselves fix the amount of damages, is to be preferred, as it prevents the necessity of a reference to a jury for that purpose, *Astley v. Welden*, 2 Bos. & Pull. 346. But the intention of the parties must be clearly expressed, for the mention of the word "penalty" or "penal sum," precludes the court from considering it as liquidated damages, *Smith v. Dickenson*, 2 B. & L. 630; *Astley v. Welden*, *wb. sup.* It is, however, worthy of observation, that, notwithstanding the above clause, equity will compel specific performance of a contract where redress in the shape of damages, or otherwise, is an inadequate remedy, *Hobson v. Trevor*, P. Wms. 191; *Goring v. Nash*, 3 Atk. 186.

Stamping.

10. An agreement cannot be produced in a court of justice as evidence of a contract, unless it be stamped. Whenever, therefore, a letter is relied on as evidence, it must first be stamped before it is read, *Ford v. Compton*, 2 B. C. C. 32. But memorandums or acknowledgments rendered necessary by 9 G. 4, c. 14, are not to be deemed agreements within the meaning of any of the Stamp Act. By the 55 G. 3, c. 184, every agreement or memorandum under hand only, where the matter thereof shall be of the value of 20*l.* and shall contain less than 1080 words, is charged with a duty of 1*l.* and when it contains 1080 words and upwards, with a duty of 1*l.* 15*s.* and for every entire quantity of 1080 words over and above the first 1080 words, with a further progressive duty of 1*l.* 5*s.* But where several letters are offered in evidence to prove any agreement, they are chargeable only with the duty of 1*l.* 15*s.*, although they may contain more than twice the number of 1080 words and upwards. Every deed, or every instrument under hand and seal, not otherwise charged, requires a stamp of 1*l.* 15*s.*, and a further progressive duty of 1*l.* 5*s.* for every entire quantity of 1080 over and above the first 1080. Articles of agreement under seal cannot be given in evidence unless stamped with a deed stamp, *Robinson v. Drybrough*, 6 T. 1 317; see further as to the stamp duty on agreements, Dig. p. iii. t. AGREEMENTS.

Different kinds of agreements.

11. The above remarks will suffice to show the distinction between agreements when they are under seal, and the informal instruments which are properly so called. As to agreements for particular purposes, see further AGREEMENTS *for a Lease*, PARTITION, PURCHASE, &c. And as to regular deeds, see further BONDS, CONDITIONS, COVENANTS, DEEDS, LEASES, PURCHASE DEEDS, &c.

Agreement with an agent, broker or factor, see *post*, AGREEMENT (*Principal and Agent*).

No. XLVI.

Agreement for Building a House.

No. XLVI.

Building a House.

Obs. 1. Where a contract is made to build a house according to a certain plan, and the owner makes deviations from the plan, this does not vacate the contract, but subjects the owner to the payment of any additional charges occasioned by such deviations, *Pepper v. Barland*, Peak's N. P. C. 103; *Godfrey v. Thomas*, Holt's N. P. C. 236.

2. The completion of a contract for building a house may be enforced by the heir on the death of his ancestor, and the executors must pay the builder whatever remains due out of the personal estate, unless it be otherwise stipulated, 2 Vern. 322; 3 P. Wms. 223; Cas. Eq. temp. Talbot, 83, n.

Articles of Agreement made entered into and concluded this day of in the yr of the reign &c. and in the yr of our Lord 18 Betn (*Builder*) of &c. of the one pt and (*Owner*) of the or. pt as follow. The sd (*B.*) for the consons Parties.

hinaftmentd doth hby for himself his hrs (*a*) exs and ads covt promise and agree with and to the sd (*O.*) his exs ads and ass that he the sd (*B.*) his exs &c. shall and will at his or their own proper costs and chas within the space of cal mths next after the date hreof in a good and workmanlike manner and according to the best of his art and skill erect build and set up one house or messe upon the grd belonging to the said (*O.*) at Builder agrees to build.

togr with the several erections and buildings set forth in the schedule hereunder-written according to the draft or scheme hereunto annexed subject to the approbation of the surveyor of the sd (*O.*) (*b*). And will build the same with such stone brick timber and other materials as the sd (*O.*) shall find and provide for the same. And it is furr agrd by and betn the sd pties That if the sd (*B.*) his exs or ads shall be guilty of any neglect or delay in the building finishing or completing the sd house Provision in case of delay.

(a) As to the naming of heirs, executors and administrators, see AGREEMENTS, Pref. s. 2.

(b) If it be so agreed, say instead of the above, "And also shall and will at his or their own proper costs find and provide good proper and sufficient materials of all kinds for erecting the sd building subject to the approbation of the sd (*O.*) or his surveyor."

No. XLVI.
Building a
House.

Owner agrees
to pay,

to find ma-
terials,

and allow for
alterations.

Arbitration
clause.

and the sd (O.) shall give or leave notice in writing of such neglect or delay at the place of abode of him the sd (B.) his exs or ads that then and in such case it shall and may be lful for the sd (O.) his exs or ads within the space of days after such notice given or left as afd in case the sd (B.) his exs or ads shall not proceed on the completion of the sd works to employ a sufficient number of workmen to finish and complete the sd house and shall and may deduct and retain to himself or themselves all such sums of money and exps as he or they shall pay or incur in the completion of the sd house. And that the sd (B.) his exs or ads shall not in any manner do or cause to be done any act matter or thing whatr to prevent the pens so employed by the sd (O.) his &c. from finishing and completing the sd house. And the sd (O.) doth hby for himself his hrs exs ads and ass covt promise and agree with and to the sd (B.) his exs ads and ass that he the sd (O.) his hrs exs or ads shall and will well and truly pay or cause to be pd unto the sd (B.) his exs &c. the sum of £ of lful money of Gt Britain in manner following that is to say the sum of £ pt thof at the laying of the chamber floors the sum of £ or. pt thof at the covering in and the sum of £ in full for the work when completely finished. And also that he the sd (O.) his &c. shall and will at his or their own prper costs and chas find and provide all the stone brick and timber and or. materials necessary for the building of the sd house. *Provided always* and it is hby agrd and declbd by and betn the pties hereto That in case the sd (O.) his exs &c. shall direct any more to be done in or about the sd buildings and preses than what is contd in the sd schedule hereunder written that then and in such case the sd (O.) his exs ads or ass shall pay or cause to be pd to the sd (B.) his exs &c. so much money as such extra work shall be worth at a rease valuation. And *lastly* it is hby covenanted and agrd by and betn the sd pties to these prests That if any dispute or difference shall happen to arise between them touching the sd house and buildings or the money to be pd for the same according to the admeasurement and value thof in case the same shall be ad-measured or valued or touching or concerning any alteration or addition or any other matter or thing whatsvr relating to the work hby contracted to be done That then and in such case if

shall be left to the determination and award of three indifferent persons one to be named by the sd (B.) his &c. and the or. by the sd (O.) his &c. and the third by the said two persons so to be named immly after such dispute shall arise. And the sd parties hereto do hereby covenant and agree with and to each other that they the sd parties shall and will severally stand to abide perform and keep the award and determination of the sd three persons so as the same be made in writing under the hands and seals of the sd arbitrators within one calendar month next after such reference. And (a) for the due observance of the stipulations by them mutually entered into each of them the sd (B.) and (O.) by these presents doth bind himself unto the other of them in the penal sum of £ by way of liquidated damages. In witness whereof the sd (B.) and (O.) have put their hands and seals the day and year first above written.

No. XLVI.
Building a House.

Penal clause.

(Builder) (L. s.)
(Owner) (L. s.)

No. XLVII.

Agreement for Building a Ship.

No. XLVII.
Building a Ship.

Articles &c. see ante, No. XLVI. Witness that the sd (Builder) shall and will at his own proper costs and charges in all things build within the space of calendar months from the date hereof one good ship of not less than tons, and not exceeding tons burthen, with such materials and to be furnished and provided in such manner as in the schedule No. I. hereunto annexed is more particularly set forth. And when the said ship is completed, he the said (B.) will let the same to him the said (Merchant) for the said several voyages at such freight and demurrage, and upon such terms as in schedule No. II. hereunto annexed is particularly mentioned. And for that purpose the said ship shall at the proper costs and charges of the said (B.) be from time to time repaired, refitted and provided in all things according to the terms hereinbefore mentioned, and according to the usage and customs of merchants. And the sd (B.) or or. managing owner and the commander thereof shall

Covenant to build,

and let to hire when finished.

(a) As to this penal clause, see AGREEMENTS, Pref. s. 9.

No. XLVII.
Building a Ship.

Ship not to be
otherwise em-
ployed.

Owner will con-
form to direc-
tions.

and will from voyage to voyage enter into a charter-party to the sd (*M.*) upon the terms in the same sched. mentioned, and in such charter-parties such further stipulations and provisions as are necssy and rease shall from time to time be inserted. *And* the sd ship until she has performed such several voyages shall not be employed upon any other service, or upon any other occasion whatever except in the service of the sd (*M.*) without the consent in writing of him the sd (*M.*) *And* that during such time as the sd ship is in the service of the sd (*M.*), the sd (*B.*) his exs ads and ass and all and every other the commanders owners and officers and crew of the sd ship shall conform themselves in the equipment of the said ship or otherwise to all such lful and rease orders and instructions as shall be given from time to time by the sd (*M.*) his exs ads or ass. *Provided always* that in case of breach of these covts and agts afid or any of them by or on the pt of the sd (*B.*), it shall be lful for the sd (*M.*) his exs &c. the sd ship wholly to reject from his service, and also to recover satisfaction for the dams occasioned by any such breach of covenant, or to seek any other such remedies as he or they shall think fit. *In witness whereof* &c. see No. XLVI. Schedules referred to—

No. I. Dimensions of the ship and inventory of stores.

II. The charter-party.



No. XLVIII.
Carrier.

No. XLVIII.

Agreement between a Manufacturer or other Person with a Carrier, to explain and restrict the Provisions of the 11 G. 4 & 1 W. 4, c. 68.

Obs. By the Carriers' Act, 11 G. 4 & 1 W. 4, c. 68, (see Dig. p. ii. tit. CARRIERS) the common law liability of carriers is much qualified; but as in that Act it is provided that it should not affect any special contracts, it is frequently necessary to enter into express agreements suited to the particular circumstances of the case.

Memorandum of an Agreement entered into the day of
in the year of our Lord between (*Carrier*) of &c.
of the one pt and (*Manufacturer &c.*) of the or. pt *Witnesseth,*

That he the sd (C.) for himself his exs &c. doth hby agree with the said (M.) that he the sd (C.) shall and will at all times take charge of and convey all goods of whatever description, which shall be offered and committed to the charge of him the sd (C.) by the sd (M.) and will truly and safely deliver the same to any persons to whom they may be addressed, whether the goods be specified or enumerated or otherwise, and whatever may be the value of such goods, provided the same do not exceed the sum of £ and if exceeding that value, then after the rate of £ per cent. for the alleged excess in value. And the sd (M.) doth hereby agree with the sd (C.) that he the sd (M.) his exs &c. shall and will from time to time as and when any goods are committed by him the sd (M.) to the charge of the sd (C.) pay or cause to be paid to the sd (C.) his exs &c. such per centage as afd together with the usual charge for the same in respect of weight and distance. *In witness &c. see ante, No. XLVI.*

No. XLVIII.
Carrier.

Agreement to
carry any kind
of goods.

Except above
a certain value.

No. XLIX.

Agreement for the Hire of a Coach or Chariot.

No. XLIX.
Coachmaker.

Memorandum &c. see No. XLVIII. That the sd (Coach-
maker) doth agree with the sd (Employer) that he the sd (C.)
his exs and ads shall and will at his or their own proper charge
on or before the day of next provide (a) a new
handsome well-built chariot with a good hammercloth and har-
ness for one pair of horses with all other accoutrements to the
rease good liking of the sd (E.) for the period of deter-
minable nevss as hnaftmentd after the rate of for each
mth. And that he the sd (C.) his exs &c. shall and will at their
own proper charge keep the sd chariot and harness &c. in good
and proper order, save and except any sashes or glass which

Coachmaker
agrees to pro-
vide coach,

and to keep the
same in repair.

(a) If the agreement be with a livery-stable-keeper for the hire of a pair of horses say—

"Two good, strong, gentle and active horses, well matched, and a good, skilful and civil driver to the rease good liking of the sd (E.); and in case the said driver or horses be disabled, then he the sd (L.) shall provide other like horses or driver as afd."

No. XLIX.
Coachman.

**Employer agrees
to pay stipu-
lated hire.**

**Dissolution of
agreement.**

may be accidentally or otherwise broken while the sd chariot is in the use of the sd (E.) (a) And in consonance of the pres the sd (E.) doth hereby agree that he the sd (E.) his exs ads or ass shall and will on the day of in each mth during the subsistence of this agmt well and truly pay or cause to be paid unto the sd (C.) his exs ads or ass the sum of £ as afd. *Provided always* that in case the sd (E.) depart this life during the subsistence of these presents, the same shall be considered as at an end and determined on the expiration of next thereafter, and that the sd (E.) or his exs &c. shall not be obliged to pay more than the proportion of the mth which may then have elapsed. And it is hereby further agreed by and between the said parties that on either of them the sd (E. or C.) giving to the other days' (or mths') notice of his intention to put an end to this agreement the same shall after the expiration of the sd notice absolutely cease and be void.

In witness &c. see ante, No. XLVI.

—◆—
Agreement to accept a Composition—see post, COMPOSITION.
—◆—

No. L.
Copartnership.

No. L.

Agreement to enter into Copartnership at some future Time.

Obs. 1. It seems that a court of equity will decree the specific performance of a contract for a copartnership, provided it is to continue for a definite period, *Buxton v. Lister*, 3 Atk. 383; *Anon.* 2 Ves. 629; but not otherwise, *Walker v. Harris*, 1 Anstr. 245.

2. In an agreement of this kind should be inserted all conditions and covenants which are not usual, as for instance, in regard to survivorship, since the good-will of a profession, if not of a trade, will survive on the death of either party, *Farr v. Pearce*, 3 Madd. 74. This ought therefore to be provided for by express stipulation. (As to copartnership, see further COPARTNERSHIP.)

Parties.

Articles &c. see ante, No. XLVI. Betn A. B. of &c. of the one pt and C. D. of &c. of the or. pt *Witness* That the sd A. B. doth

(a) If it be so agreed say—

"Or except such damage as may happen to the sd chariot by overturning or other violence, whether under the care of the coachman or servant of the sd (E.)"

hby agree to take the sd C. D. into coptnshp with him in his trade or business of for the space of seven years and to assign to him a moiety of his int. in the house wherein the sd trade is now carried on the sd coptnshp to commence from the day of next ensuing on the terms and condons follg that is to say *That* the sd C. D. shall pay to the sd A. B. on or before the sd day of the sum of £ as a premium or fee to be admitted into the sd coptnshp *That* the stock in the sd trade shall be valued on or before the day of by two indifferent persons one to be chosen by the sd A. B. and the other by the sd C. D. and in case they cannot agree by an umpire to be chosen by the sd arbitrators *That* the sd C. D. shall advance a sum equal to half the amount of the sd valuation to be pd within the space of cal mths after the commencement of the sd coptnshp *That* a proper deed or instmt in writg shall be prepared within the space of six weeks from the date of these prsts at the jt expence of the sd pties in which deed it shall be provided and decl'd *That* the capital stock shall consist of £ and that if either pty be minded to bring in a furr capital the sd jt stock shall be liable to make good the same with int after the rate of five *per cent. per ann.* *That* neither of the pties shall at any time during the continuance of the sd term be concerned in any or. trade *That* all the insurable pt of the stock shall be insured at the expence of the jt trade *That* no apprentices shall be taken nor servants dismissed or hired witht the mutual consent of the sd pties *That* the premiums with apprentices shall be added to the jt stock *That* books of accts shall be kept in the usual manner and be open to the inspection of the sd pties *That* true and just accts of the jt trade shall be made half yrly and the surplus proceeds be divided equally and proportionally between them *That* neither of the pties shall apply the ptshp mos to his own use nor buy and sell accept and give bills compound and release debts nor do any or. thing to affect the jt trade witht the consent of the or. *That* if either of the sd pties shall happen to die bfre the expiron of the sd term no bent of survivorshp shall accrue to or be taken by the or. of them *That* disputes shall be referred to arbitration and all or. covts provos and stipulations clauses and agrments shall

No. L.
Copartnership.

Terms of agree-
ment.

Deed of copart-
nership to be
executed.

Covenants and
clauses to be
inserted in the
deed.

No. L.
Copartnership.

be inserted as are usual in deeds of coptship of a like kind.
witness &c. see ante, No. XLVI.



Agreement for Dissolution of Copartnership,—see post,
PARTNERSHIP (*Dissolution.*)



No. LI.
Debtor and
Creditor
(Composition).

No. LI.

Agreement between a Debtor and his Creditors to pay his D
by Instalments.

Obs. As to the force and efficacy of such an agreement, see C
POSITION.

Parties.

Debtor agrees
to pay trustees.

Articles &c. (see ante, No. XLVI.) Betn (Debtor) of &c.
the first pt A. B. of &c. C. D. of &c. and E. F. of &c. credi
of the sd (*Debtor*) of the second part and (*Creditors*) of the t
pt. *Whas* the sd (*D.*) on the day of the date of these pres
stands justly indebted to the sd (*C.*) in the sevl sums of m
followg (*Here recite the amount of debts to the several par*
and the sd sevl crs above named at the request of the sd
do resply agree to accept and take their respive debts in
manner and proportion as is hinafter mentd. *Now these*
sents Witness That the sd (*D.*) for himself his hrs exs ads
ass doth hby covt promise and agree with and to the sd
of the second and third pts their respive exs ads and ass th
the sd (*D.*) his hrs exs or ads or some or one of them shall
will by and with the consent direction nomination and app
of his sd or. crs testified by their being made pties to
prests and their sealing and delivering of the same well
truly pay or cause to be pd unto A. B., C. D. and E. F.
exs or ads or some or one of them the full sum of £ o
money of Great Britain on the day of next ens
the date of these prests or within three days after and the
sum of £ on the day of every mth then next
successively followg until the sum of £ being part of tl
sum of £ be thby pd and satisfied. *And* shall and
likewise pay or cause to be pd unto the sd A. B., C. D.

E. F. their exs or ads or some or one of them the furr sum of £ on the day of which is in the year 18 being the residue and in full satisfaction and discharge of the afd sum of £ and of all or. sum and sums of money due and owing to the sd (C.) resply or any of them. *Upon* special trust and confidence nevertheless and to the intent and purpt that the sd A. B., C. D. and E. F. shall and will upon demand pay and satisfy unto each and evy of the sd crs above named a just due and equal pt or share of all such sum or sums of money as shall from time to time be so pd to them or either of them resply by the sd (D.) in proportion to the sevl debts hinbefe mentd to be due to them the sd A. B., C. D. and E. F. and the rest of the crs resply. *And* the sd crs for themselves sevlly and resply and for their sevl exs and ads and not the one for the or. of them do and each of them doth hby covt and promise with and to the sd (D.) his exs and ads that until deflt shall be made by the sd (D.) his exs or ads of or in payment of the sd sum or sums of money hinbefe covtd to be pd or of some pt thof contrary to the true intent and meaning of the sd covt they the sd crs above named or any of them or any of their exs or ads resply shall not nor will sue arrest imprison implead or attach the sd (D.) his hrs exs or ads or any of their or his lds tenmts goods or chattels or any pt thof for or upon the acct of the sd sum of money or any or. sum or sums of money now due or owing to them or any of them in any wise howser. *And* in case the sd crs their exs or ads or any of them resply shall before such deflt made act or do contrary to the sd covt he the sd (D.) shall be and is hby for ever acquitted and relsd of and from all sums of money bills bonds accts and demands whatsr due owing or belonging to or which may or might be asked claimed or demanded by such of the sd crs resply so acting or doing contrary to the sd covt for any matter cause or thing whatsr unto the day of the date of these presents. *And* the sd (D.) doth hby covt and promise with and to the sd A. B., C. D. and E. F. and the rest of the sd crs above named that within the space of days next after they the sd crs above named have sealed and executed these presents he shall and will deliver to and leave with them the sd A. B., C. D. and E. F. or one of them a true acct of all his stock and effects and of all the debts now due and owing to

No. LI.
Debtor and
Creditor.

Creditors agree
not to sue.

Debtor cove-
nants to deliver
in an account.

No. LI.
Debtor and
Creditor.

him from any person or persons whomsr togr with an acct
the names and places of abode of the sevl pties owing the sam
In witness &c. see ante, No. XLVI.

No. LII.
Debtor and
Creditor
(Bankrupt).

No. LII.

*Agreement by a Bankrupt to pay a Debt from which he is
discharged.*

Obs. By the 6 G. 4, c. 16, s. 131, it is provided that no bankrupt shall be liable upon any promise to pay a debt discharged by certificate, unless such promise be in writing, see Dig. p. ii. tit. BANKRUPT, p. 203, n. (r).

I, A. B. of &c., do hby promise and agree with (C.) of &c. that in consideration of his forbearance I will pay him the sum of £ from which I have been discharged by certificate in manner following, that is to say, the sum of £ at the expiration of mths, and the remaining sum of £ at &c.
Witness my hand,

A. B.

No. LIII.
Debtor and
Creditor
(Infant).

No. LIII.

*Agreement by a Person to pay a Debt contracted during
Infancy.*

Obs. By the 9 G. 4, c. 14, s. 5, no person can be charged upon any promise, made after full age, to pay a debt contracted during infancy, unless the same be in writing.

I, A. B. of &c., being now of full age, do hby promise and agree with and to (C.) of &c. that, in consideration of the debt contracted with him during my infancy being a just and bona fide debt, I will pay him the sum of £ the amount thereof after the expiration of mths from the day of
Witness my hand,

A. B.

No. LIV.

No. LIV.
Exchange.

Agreement for an Exchange.

As to the nature of an exchange, see EXCHANGE. As to the form, see AGREEMENT, Pref. s. 10.

Recital of title.
Articles of &c. see *ante*, No. XLVI. Betw A. B. of S. of the one part and C. D. of &c. of the other part. *Whas* the sd A. B. is seised to him and his heirs (a) of certain lands situated at _____ in _____ of _____ and the sd C. D. is also in like manner seised of _____ and his heirs of certain messes or tents and lands situate &c. *Whas* the sd A. B. and C. D. have agreed to make an exchange of their respective premises and hereditaments (b) *Now these Preliminary witnesses* That each of them the sd A. B. and C. D. each himself his respective heirs executors and administrators doth hereby covenant promise agree with and to the other of them that he shall and will on or before the _____ day of _____ next at his own expence make deliver or cause to be made and delivered unto the other of _____ a full complete and perfect abstract of their respective titles in the sd premises to be exchanged. (c) *And* if the counsel of the respective parties shall be of opinion that each of them the sd _____ and C. D. has a good title to his respective premises that each of them the sd A. B. and C. D. shall and will on or before the _____ day of _____ now next ensuing execute at the expence of _____ or of them such conveyances and assurances together with all necessary covenants as shall by their respective counsel be reasonably required the sd C. D. likewise receiving the sum of £ _____ for _____

Agreement to make exchange; to furnish abstract;

to execute conveyances mutual;

) If the premises are copyhold, recite " *Whas* the sd A. B. is seised to him his heirs according to the custom of the manor of certain copyhold or customary lands situate &c. And the sd C. D. is also seised of &c." If leasehold, recite " *Whas* the sd A. B. is possessed of a certain messuage or tenement and premises situate &c. and held by a certain indenture of lease bearing date on about the _____ day of _____ 18 _____ and made between (lessor) of the one part and sd A. B. of the other part subject to the rents and covenants therein contained on the part of lessee or tenant to be paid done and performed. And the sd C. D. is also _____" see EXCHANGE, Pref.

) If the premises are leasehold, omit the words " hereditaments."

) If the premises are leasehold, say " but in this abstract the sd A. B. or C. D. shall not be required to show his lessor's title." See AGREEMENTS for a further form, s. 6.

No. LIV.
Exchange.
to receive rents,
&c.

equality of exchange (a). *And lastly* that each of the sd pties shall be intituled to the rents and profits of the sd preses so to be to them reply assured from the day of now next ensuing up to which time all taxes rates and or. chas whatsr paye in respect to the sd preses shall be pd by the pty conveying the same. *In witness &c.* see *ante*, No. XLVI.



No. LV.
Exchange.

No. LV.

Agreement by Trustees to convey a Parcel of Land by way of Substitution for the Rights of Common.

Obs. As to exchanges of this nature, see *Abstract of 4 & 5 W. 4, c. 30. App. No. XV.*

Articles of &c. see *ante*, No. XLVI. Betn (*Trustees*) of the first pt (*Owner of the land*) of the second pt and A. B. of the third pt Whas by indres of lease and rele bearg date resply the days of 18 the rele being made or expssd to be made betn the sd (*O.*) and M. his wife of the one pt and the said (*T.*) of the or. pt and by virtue of a common recovery suffered in or as of term 18 in which the sd (*O.*) and M. his wife were vouched The manor of M. in the parish of and divers lds tents and heredts thin described situate &c. were conveyed limited and assured to the said (*T.*) their hrs and ass *In trust* to sell the same and to stand possessed of the mos to arise by such sale or sales *Upon* and for the trusts interests and purps thin expssd and decl'd of and concerning the same. *And* by the in pt recited indre it was decl'd and agrd That it should be lful for the sd (*T.*) and the survor of them his hrs and ass at any time or times previously to the sale of the whole of the preses thby made saleable as afd with the consent and by the direction of the sd (*O.*) his hrs or ass to be testified in writing under his or their hand or hands to convey surrender or assure any of the same heredts or such of them as shd remain

Recital of conveyance to trustees ;

power of sale ;

(a) If it be so agreed, say “ *And* it is hereby mutually agrd betn the sd pties that it shall be expressly declared in the sd conveyances that neither of them the sd A. B. and C. D. shall re-enter on the lds conveyed in exchange in consequence of any defect of title.” See EXCHANGE, Pref. s. 2.

unsold under the trusts thereinbefore contained for or in lieu of or by way of substitution or exchange for any or. heredit or for such or. equivalent or recompense in lds tents or heredit as shd be thought expedient and to make and exte all such conveyances and assurances as shd be requisite and necessary to effect and complete such exchanges as are thinbefe mentd. *And also* to receive any sum or sums of money by way of equality of exchange. *And whas* no sale hath hitherto been made in pursuance of the sd in pt recited indres of lease and release. *And whas* there are within the sd manor divers commons and waste lds which are subject to the rights of common belonging appurtenant or attached to divers messes lds tents or heredit in the parish afd and it is in the contemplation of the sd (O.) and his (T.) with the consent of the respive proprietors of the sd messes lds tents or heredit to apply for an Act of Parliament for dividing allotting and inclosing the same commons and waste lds. *And whas* the sd A. B. is seised of or intituled to the inheritance in fee simple of and in all those &c. (*parcels*) and the sd A. B. is also intituled to right of common for or in respect of the sd piece or pcel of ld and heredit hinbefe described in over or upon the sd commons and waste lds within the said parish and manor of afd. *And whas* the sd (T.) with the consent of the sd (O.) testified by his being a pty to and signing and sealing these prests have agrd with the sd A. B. to convey unto the sd A. B. and his hrs the piece or pcel of ld and heredit hinafr described being pt of the heredit comprised in the sd in pt recited indres of lease and rele and the inhance thof in fee simple in lieu of and by way of substitution for the rights of common and or. rights belonging or appurtenant or attached to the sd piece or pcel of lds and heredit hinbefe described and such allotment or allotments as shall at any time or times hrafr be made in lieu of or by way of compensation for such rights of common &c. *Now these Presents witness* That in conson of the agreements hinafr contd on the pt of the sd A. B. they the sd (T.) do hereby for themselves as trees as afd and their hrs and ass and with the consent and by the direction of the sd (O.) testified as afd agree with the sd A. B. his hrs and ass that they the sd (T.) their hrs and ass shall and will at any time or times hrafr at the request costs and chas of the sd

No. LV.
Exchange.

that there has been no sale.

Recital that lands are subject to rights of common ;

that A. B. is intituled to certain lands and right of common.

Agreement to exchange.

Testatum.

No. LV.
Exchange.

A. B. his hrs and ass make do and exte all such acts con and assurances as shall be requisite for conveying and assu unto and to the use of the sd A. B. his hrs or ass or orw he or they shall direct or appt all that &c. with the apps [e all rights of common] and also that they the sd (T.) shall will henceforth until such assurances shall be made stand s of and interested in the same *In trust* for the said A. B. *these Presents further witness* That in conson of the ag hinbefe contd on the pt of the sd (T.) he the sd A. B. doth for himself his hrs exors and ads agree with the sd (T.) hrs and ass that he the sd A. B. his hrs and ass and all or necessary and proper pties shall and will at any time or t hrafr at the request costs and chas of the sd (T.) their cestuique trusts or ass make do and exte all such acts ma and things as shall be requisite and necessity for conveying assuring unto and to the use of the sd (T.) their cestuique ti or ass or orwise as he or they shall direct or appt free from cumbrances in fee simple of all rights of common and or. ri appertaining to the sd piece or pcel of ld and hereds hin described and also in the meantime and until such conveya and assurances shall be made and exted he the sd A. B. s stand seised of and interested in the sd commons and or. ri of common and allotments as afd *In trust* for the sd (T. trees as afd their hrs and ass. *In witness &c.*

—◆—
Agreement for Freight—see post, SHIPPING.
—◆—

No. LVI.
Good-will
(Business).

No. LVI.

Agreement to relinquish a Business in Favour of another

A good-will is
property.

Obs. 1. The good-will of a business has been frequently recogn in courts of equity as a valuable interest, *Kennedy v. Lee*, 3 L 441; *Cook v. Collingridge*, Jac. 607; and so under certain circ stances in courts of law, *Ex parte Farlow*, 2 B. & Ad. 341; *S. R. v. Hungerford M. Company*, 4 B. & Ad. 592; but not w the profits arise from confidence in the personal skill of the party

in the case of surgeons or attornies, *Farr v. Pearce*, 3 Madd. 78; *Spicer v. James*, cited Collyer on Part. 82. No. LVI. Good-wil (Business)

2. In *Lyburn v. Warrington* an agreement to give up a trade was held not to require an *ad valorem* stamp, not being considered as Stamp. distinct substantive property; but an agreement for the sale of goods, as well as good-will for a given sum, requires a stamp, *South v. Finch*, 3 Bing. N. C. 506; S. C. 4 Scott, 293; see further, *post*, ASSIGNMENT of Good-Will.

Memorandum of an agrt made this day of &c. Betn I. S. of &c. widow and relict of W. S. late of &c. deceased of the first pt I. N. W. of &c. of the second pt and (Surety) of &c. of the third pt as follow The sd I. S. in conson of the agrt hinafr contd on the pt of the sd I. N. W. doth hby for herself her exs and ads promise and agree to and with the sd I. N. W. his exs and ads That she the said I. S. shall and will on the day of next relinquish the business of lately I. S. agrees t relinquish her business; wed and carried on by the sd W. S. her late husband decd and now continued to be carried on by the sd I. S. at afd to and in favour of the said I. N. W. And also in due form of law effectually transfer and assign to him the sd I. N. W. all the stock fixtures utensils and implements in trade used in and belonging to the sd business at such prices and under such valuation and settlement as hinafr mentd. And also shall and will grant a lease to him the said I. N. W. of the dwelling-house shops warehouse and premises wherein the sd I. S. now resides and wherein the sd business is now carried on for the term of yrs from the day of instant at or under the yearly rent of payable quarterly clear of all taxes and deductions whatsr. And the said I. N. W. doth hby for himself his exs and ads promise and agree to and with the said I. S. her exs and ads to accept and take the sd stock fixtures utensils and implements in trade and pay and secure to be pd in manner as hereinafter expsd such a sum of money for such stock fixtures utensils and implements in trade and also the good-will of the said business as the same shall be valued at and agrd on by two arbitrators to be chosen one by the sd I. S. and the or. by the sd I. N. W. or in case they shall disagree in making such valuation Then such a sum of money as shall be settled by a third psn to be chosen as umpire by them to grant lease premises. I. N. W. agr to take busine fixtures, &c.

No. LVI.
Good will
(Business).
 to accept lease.

the sd arbitrators. *And also* that he the sd I. N. W. shall and will accept and take a lease of the sd dwelling-house shop and preses upon the terms afd and at his own expence exte the lease and a counterpart thof in which sd lease shall be contd all usual and proper covenants and partlarly a covt for paymt of rent as hinbefe mentd. *And* shall and will on the day of next pay or &c. unto the sd I. S. one third part of the amount of such valuation as afd *And* shall and will give the jt and sevl bond of himself and the sd (S.) as a secty for the paymt of the remr of the sum at which the sd stock &c. shall be valued by four equal successive annual instalments the first annual instalment to be pd on the day of 18 togr with interest after the rate of 5*l.* per cent. per ann. upon the remr of the sum at which the sd stock &c. shall be valued as afd So that upon paymt of each annl instalment of the principal the whole of the interest then due shall be pd to the sd I. S. *And* the sd (S.) in conson of the preses and as surety for and in behalf of the sd I. N. W. his son shall and will pay to the sd I. S. the sum so agreed to be pd by the sd I. N. W. as the third pt of the amt of such valuation as afd on the sd day of instant *And also* shall and will join with the sd I. N. W. in such security as afd for the payment of the residue of the sum at which such stock fixtures utensils implements and good-will shall be valued with interest as afd. *In witness &c.* see *ante*, No. XLVI.

AGREEMENTS TO GUARANTEE.

- | | |
|---|--|
| 1. <i>Guarantee must be in Writing.</i> | 3. <i>Representation of Character.</i> |
| <i>Exceptions to the Rule.</i> | 4. <i>Stamp.</i> |
| 2. <i>Consideration must appear.</i> | |

Guarantee must
be in writing.

Exceptions to
the rule.

SECT. 1. By the 4th section of the Statute of Frauds an agreement to pay the debt of another must, in order to give a cause of action be in writing, *Saunders v. Wakefield*, 4 B. & A. 595; but if a party actually make payments for another, a responsibility may be inferred from the circumstances, without any promise in writing, *Shaw v. Woodcock*, 7 B. & C. 73; and if a party admits a binding guarantee

by paying money into court, on a count charging him with it, it will not be necessary to prove a written promise, *Middleton v. Brewer*, 1 Peake, 15. To Guarantee.

2. The writing must contain the consideration for the promise as well as the promise itself, *Saunders v. Wakefield*, *ub. sup.*; therefore a promise to pay for goods to be supplied in future is good, because the supplying the goods is the consideration; but a promise to pay for goods already furnished is bad for want of such consideration, *Wood v. Benson*, 2 Cr. & J. 94; S. C. 2 Tyrw. 74; unless it be stated that the thing done in favour of a third party has been done at the guarantor's request, *Payne v. Wilson*, 7 B. & C. 423; see further, Dig. p. ii. tit. FRAUDS (STATUTE OF). Consideration must appear.

3. By the 9 G. 4, c. 14, s. 6, representations relating to the conduct, credit, ability &c. of another, which are in the nature of guarantees, must be in writing, in order to sustain an action against the party making the representation, see Dig. p. iii. tit. LIMITATIONS. Representations of character.

4. A guarantee will require a stamp or otherwise, according as a stamp is required for the principal contract or otherwise, *Warrington v. Furber*, 8 E. 242; *Watkins v. Vince*, 2 Stark. 368; but representations as to a person's credit are expressly exempted by the 9 G. 4, c. 14, from all stamp duty. Stamp.

No. LVII.

Agreement to guarantee the Payment of Goods furnished to a third Person.

No. LVII.

Payment of Goods (third Person).

In consideration of your agreeing to supply (a) my son with goods in the way of his trade as a upon months' credit, I hereby promise to be answerable for the amount at the end of that period, or at any time afterwards, not exceeding the sum of £ , within one calendar month after demand (b).

(a) If the promise be for goods already supplied, it will be necessary, in order to shew the consideration, to say, "of your having at my request supplied" &c., see *note*, sect. 2.

(b) If the guarantee be given to a mercantile firm, it will be necessary to add "And this promise shall not be affected by any change in the firm of your house," otherwise it will be inoperative in case there is a change in the firm, *Strange v. Lee*, 3 East, 484.

AGREEMENTS FOR AN INCLOSURE.

- | | |
|---|--|
| 1. <i>Inclosures under Statute or by Agreement.</i>
2. <i>Acts of Commissioners.</i>
3. <i>Extinguishment of Roads.</i>
4. <i>What may be a Fence.</i>
5. <i>Saving Clause.</i> | 6. <i>Allotments to Lord.</i>
7. <i>Allotments to Copyholders.</i>
8. <i>Tenure of Allotments.</i>
9. <i>Right of Appeal.</i>
10. <i>Notice of Appeal.</i> |
|---|--|

Inclosures
under statute or
by agreement.

SECT. 1. By the 29 G. 2, c. 36, amended by the 31 G. 2, c. 1, lords of manors and tenants are empowered, with the assent of a major part in number and value of the owners of wastes and commons and also of the owners of tenements to which the right of common belongs, to inclose for the growth of timber all or any part of such wastes, for such time and on such conditions as may be agreed. Inclosures for the general purposes of cultivation might also be made by agreement between the proprietors of wastes and commons with the consent of the lord of the manor; but as such agreements were binding only on the parties themselves, it was usual to apply for an Act of Parliament, or to obtain a decree of the Court of Chancery, by way of confirming the several covenants. The 41 G. 3, c. 109, commonly called "The Inclosure Act," contains a summary of the provisions usually inserted in particular Inclosure Acts. The 1 & 2 G. 4, c. 23, is an amendment of the latter Act; and for facilitating inclosures by the agreement of the parties, the 6 & 7 W. 4, c. 115, enacts, that two-thirds of the parties interested in any common or common fields may enter into an agreement in writing to inclose and allot the same by the means of commissioners. No agreement to be binding unless a public meeting be previously held; and by ss. 11, 12) four-fifths of the proprietors are empowered to adopt a plan or admeasurement previously made, and also to lay down rules and regulations for the guidance of commissioners. By (ss. seven-eighths of the proprietors are empowered to enter into an agreement for inclosing such lands without the help of commissioners provided a schedule of the lands proposed to be inclosed be deposited with the clerk of the peace, and notice thereof be fixed on the church door, see further, Dig. p. ii. tit. COMMONS.

Acts of com-
missioners.

2. Where three commissioners are appointed to transact the business of the inclosure, and one of them dies, any act done by the others before the appointment of a successor has been held to be valid, *Nicholson v. Middleton*, 3 B. & B. 214.

3. Where commissioners under an Inclosure Act omitted to notice a private way, it was held to be extinguished under the general Act, the 41 G. 3, c. 109, s. 1; *White v. Reeves*, 2 B. Moore, 23. But in the case of a towing path near a river, not noticed by the commissioners, it was held not to be within their jurisdiction, since nothing could be substituted for it, as in the case of any road or way, *Simpson v. Scales*, 2 B. & P. 496. For an Inclosure.
Extinguishment of roads.
4. A ditch is held to be a sufficient fence under the 41 G. 3, *Ellis v. Arnison*, 1 B. & C. 70; 2 Dow. & Ry. 161. What may be a fence.
5. Where, in an allotment in lieu of the right of common and of the soil, there is the usual saving clause, reserving to the lord all seignories incident to the manor, rents, services and other royalties, this will not extend to a mine, unless it be reserved in express terms, a mine being considered a part of the soil, *Tonnley v. Gibson*, 2 T. R. 701. Saving clause.
6. The lord of the manor is intitled to an allotment in respect of his demesnes, besides his allotment as lord, *Arundel v. Falmouth*, 2 M. & S. 440. Allotments to lord.
7. When two rights of common in the wastes of two manors appertain to the same tenant, a copyholder, he will be intitled to an allotment on the inclosure of each waste, whether the manor be held under the same or different lords, *Hollingshead v. Walton*, 7 E. 485; *Berwick v. Matthews*, 5 Taunt. 365; S. C. 1 Marsh. 50. Allotments to copyholders.
8. An inclosure was held to have the effect of making copyhold allotments into freehold, unless otherwise expressly directed in the Act. A copyhold must be time out of mind, and cannot be created in the present day, except by Act of Parliament, *Revell v. Joddrell*, 2 T. R. 415. But now by the 6 & 7 W. 4, c. 115, s. 36, allotments are to be of the same tenure as the lands in respect of which they are made. Tenure of the allotments.
9. By the 41 G. 3, c. 109, s. 35, the award of the commissioners is made to be binding upon all parties interested, unless there be any provision to the contrary in any Inclosure Act. The 1 & 2 G. 4, c. 23, s. 3, provides, that the right of appeal to the award is not to be taken away. The 6 & 7 W. 4, c. 115, s. 53, gives a general right of appeal for any thing done under this Act, or the 41 G. 3, c. 109, except where they are declared to be final and conclusive. [As to awards, see further AWARD.] Right of appeal.
10. In an Inclosure Act it ought to be provided that notice should be given to the parties interested, *Rex v. Just. Lanc.* 1 B. & A. 630. There being no provision in the general Act except for notice to the commissioners, although the 6 & 7 W. 4, c. 115, s. 53, provides for Notice of appeal.

For an Inclosure. such notices, it is proper to insert it in the agreement, see further Dig. p. ii. tit. COMMONS.

No. LVIII.
Inclosure.

No. LVIII.

Agreement between Proprietors of Waste and Common Lands, by Consent of the Lord of the Manor, to divide and inclose the same. (Variations where an Act of Parliament is to be applied for.)

Recital of
agreement.

Articles of &c. (see No. XLVI.) between Sir W. B. lord of the manor of H. in the parish of &c. of the first pt the Rev. I. H. vicar of the sd parish of the second pt and A. B. C. &c. the sevl owners and proprietors of the common lds in the sd parish of the third pt *Whas* at a meeting held at on the day of 18 pursuant to public notice (a) given on the day of last past it was agreed by the persons there present being in number and value four fifth parts (b) of the parties interested in the common fields lying in the parish of that the same should be inclosed and allotted in manner

Agreement.

hereinafter mentioned. *Now these Presents witness* That (c) a division and inclosure shall be made by metes and bounds &c. of the sd open or common fields arable meadow and pasture lands and shall be allotted and assigned to and among the sevl pties interested therein by the commrs hnafter named in proportion to their sevl rights and ints the same to be taken in lieu and full satisfaction thereof (d) and the sd (*Owners*) being

(a) As to the necessity of the notice, see sect. 1.

(b) As to the number of consentients, see sect. 1.

(c) If it be so agreed, then say, "That application shall forthwith (or 'in the next session') be made to Parliament for an Act to appoint and empower commrs to inclose divide and allot the sd open or common fields arable pasture or meadow lds to and among the sevl psns interested thin according to their respive shares rights and ints in manner following."

(d) If it be agreed that the inclosure shall be made according to a previous admeasurement (see sect. 1, and 6 & 7 W. 4, c. 115, s. 11), then add, "according to the admeasurement valuation maps and plans made in the year 18 ." If any rules and regulations are agreed upon (see 6 & 7 W. 4, c. 115, s. 12), then say, "according to the rules and regulations agreed to at this present meeting." If the inclosure is to be made without the help of commissioners, then omit the words "by the commrs hnafter named," and say, "according to the schedule agreed to and adopted by the parties here present."

resply prepietors tenants or occupiers of the sd common lds do for themselves sevlly not jtly nor the one for the other but each of them for himself his hrs exs and ass doth by and with the consent and approbation of the lord of the sd manor covt promise and agree with and to the or. of them his hrs exs ads and ass in manner follg that is to say *That* the commrs shall and may first set out and apart in such place and places as they shall deem convenient such parcels of the commons and waste lds not exceeding in the whole acres for the purpe of getting gravel stone and sand for the use of the sevl psns interested in the sd commons and waste lds for the repair of the roads and highways within the sd township or parish and for such or. purps as the sd commrs may deem expedient. *And that* the commrs shall and may mark out the public and private roads and ways over or across the sd commons and waste lds as they shall think fit the breadth of the road not to exceed feet. *And that* then after allotting one full tenth part of the sd commons and waste lds to the sd (*Lord*) for his share and proportion thof as lord of the manor and soil of the sd parish or township over and above what the sd commrs shall deem it right to allot to him in respect of his (*a*) freehold lds within the sd parish or township then one tenth (*or* "fifteenth part") of the residue of the sd commons and waste lds unto the sd (*Rector*) in lieu of and in recompense for the tithes of the sd commons and waste lds to which the sd (*Rector*) is intituled as rector of the sd parish. *And* *lastly* the sd commrs shall allot the rems of the sd commons and waste lds to the (*O.*) pties heto in proportion to the value of their sevl and respive freehds and copyhds due regard being had to the quantity quality and contiguity of the lds to be assigned as well as to the sevl and respive rights of common in and upon the same commons and waste lds. *And that* for the better carrying (*b*) this agreement into execution the sd commrs shall be invested with full powers to determine all differences and disputes as well respecting the claims of the sevl pties to right of common on the sd commons and waste lds as also betn landlords and lessees in respect to the fencing and improving

No. LVIII
Inclosure.

Commissioner
to set out an
allotment for
gravel &c.;

to mark out
roads;

to make allot-
ments to the
lord of the
manor;

to the rector;

to the owners

agreement to
determine dis-
putes.

(a) As to the allotments to the lord, see sect. 6.

(b) Or say, "this intended Act."

No. LVIII. <i>Inclusura.</i>	the allotments so that no lessee or occupier should be compellable or required to pay more than per cent. per ann. for the money which may be expended by his lessor or landlord in
Tenants for life to have power to mortgage for the payment of expences.	fencing and improving the same. <i>And also</i> that tenants for life shall have power under the direction of the commrs to mortgage their respive allotments for raising money to defray their share of the expences to be incurred in completing the inclosure (a) provided the sum or sums of money so raised do not
Saving clause.	exceed pounds per acre. <i>And it is hereby further agrd</i> (b)
Allotments to be of the same tenure.	That nothing herein contained shall be construed to prejudice the interest and right of the sd (<i>lord</i>) in and to the seignory royalties customs services and other manorial rights within the sd township or parish except as to right of common and the soil therein. <i>And</i> (c) moreover That all shares and allotments out of the sd commons and waste lds shall be deemed to be of the same tenure (d) with the freehd or copyhd estates or lds within the sd township or parish or any of them to which or in
Quiet enjoyment of old rights of common.	right whereof such allotment shall be made. <i>And also</i> that all psns having a right of common in the sd commons or waste lds who shall have peaceably enjoyed the same witht payg any fine rent or amerciamnt to the sd (<i>lord</i>) for 20 yrs shall although the same shall have been acquired by encroachment or unful inclosure be deemed the proper exclusive owners thof. <i>And further</i> That A. B. of &c. and C. D. of &c. shall be appointed commrs, and F. G. of &c. and K. L. of &c. shall be named surveyors. <i>And also</i> That the sd commrs shall exte an award of which there shall be two parts the one to be lodged in the vestry-room or church of the sd parish and the or. to be in-
Commissioners to execute an award.	rolled in the Court of Common Pleas. <i>And</i> (e) <i>also</i> That no-
Notice of appeal to be given to parties.	

(a) Or say, "in consequence of the intended Act of Parliament."

(b) Or say, "That in the sd Act shall be inserted all such other usual clauses and provisions as are necessary for carrying the sd agrt into exon according to the intent and meaning of the sd pties provided only that nothing herein" &c. See *above*.

(c) Or say, "And moreover that the sd Act shall declare and provide That all" &c. See *above*.

(d) As to the tenure, see sect. 8.

(e) Or say, "*And also* That there shall be a clause in the sd Act directing that notice of" &c. See *above*.

ice (a) of appeals agst the award of the commrs shall be given to the pties themselves that are interested therein as well as to the commrs. *And lastly* it is hby decl'd and agr'd by and betn the pties hereto That the expences of carrying this agrt into execution shall be sustained and pd by the sd (lord) and the sevl eehdrs and copyhdrs and psns interested in the sd commons and waste lds in proportion to the value of the allotments which shall have been made to them resply.

In witness &c. see ante, No. XLVI.

No. LVIII.
Inclosure.

Expences to be defrayed by all parties proportionably.

AGREEMENTS FOR A LEASE.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. <i>Agreement to be in Writing.</i> 2. <i>Not a substitute for a Lease.</i> 3. <i>Agreement binding on Tenant in Tail, but not his Issue.</i>
<i>On Husband, but not on Wife.</i>
<i>On the Wife also.</i>
<i>On Remainder-man.</i>
<i>On an Alien Artificer.</i>
<i>On a Copyholder.</i> 4. <i>Specific Performance.</i> 5. <i>Agreements ought to be explicit.</i> | <ol style="list-style-type: none"> 6. <i>Covenants not to assign.</i>
<i>To repair.</i>
<i>To pay Rent.</i>
<i>To pay Taxes.</i>
<i>For production of Lessor's Title.</i> 7. <i>Duration of Term.</i> 8. <i>Usual Covenants.</i>
<i>Not to carry on Trade.</i>
<i>As to intervening Accidents.</i> 9. <i>Exemption from Stamp Duty.</i> |
|--|---|

SECT. 1. An agreement for a lease, unless for a term not exceeding three years, and for which the rent reserved is at least two thirds of the real value, is required by the Statute of Frauds, 29 Car. 2, c. 3, to be in writing, and signed by the party to be charged therewith, or his agent legally authorized (see further as to signing AGREEMENTS Pref. s. 5).

2. Parties are frequently let into possession under such an agreement, and allowed to continue in possession without any more formal instrument being executed; but the practice is very insecure, and has given rise to much litigation. An agreement for a lease will not operate as an actual lease, unless it be considered to amount to a present demise, on which the decisions of the courts have not been uniform. Formerly, any words shewing the intention of the parties that the lessee should occupy as tenant were deemed sufficient to constitute an actual present demise, Cro. Eliz. 33, 486; Hob. 34; *Barter v. Brown*, 2 Bl. 973; *Barry v. Nugent*, cited 5 T. R. 165, n.

An agreement not a substitute for a lease.

(a) As to notices of appeal, see sect. 10.

For a Lease.

But by the current of recent authorities it is now settled, that where the paper is executory in its terms, containing no words of present demise, it shall be construed to be an agreement only, *Hegan v. Johnson*, 2 Taunt. 148; *Morgan v. Bissell*, 3 ib. 765; *Tempest v. Rawling*, 13 E. 18; *Dunk v. Hunter*, 5 B. & A. 322; *Hamerton v. Stead*, 3 B. & C. 478; *Clayton v. Burtenshaw*, 5 B. & C. 41. A tenant holding under such an agreement has no security for his possession, as he is always liable to be evicted in an action at law, and the owner has no remedy by distress for non-payment of rent, but is driven to his action for use and occupation, *Hagan v. Johnson*, *ub. sup.*; unless rent has already been paid, which creates a tenancy from year to year, *Hamerton v. Stead*, *ub. sup.*; *Mann v. Lovejoy*, 1 Ry. & Mood. N. P. 355.

Agreement
binding on ten-
nant in tail, but
not on his issue.

3. An agreement for a lease will in many cases not be equally binding on the parties as a lease would be. An agreement for a lease by tenant in tail under the 32 H. 8, c. 28, although binding on him, will not be binding on his issue, if he die without perfecting the agreement, 1 Ch. Ca. 171; 1 Lev. 239; Prec. Chan. 278; *Hinton*

On husband,
but not on wife.

v. Hinton, 2 Ves. 634. So an agreement by husband and wife seised in right of the wife under the same statute will not, it is apprehended, be binding on the wife or her heirs in the event of the husband dying before the execution of the lease, because the statute (which authorizes leases only) must be strictly construed, Cowp. 267; 2 Freem. 224; 1 Rop. Husb. & W. 96. If, however, a husband

On the wife
also.

possessed of a term of years in right of his wife, enters into an agreement for an under lease, and dies before the execution of the lease, such an agreement will, it seems, be binding on the wife, because terms of years are not within the statute, *Stead v. Craigh*, 9 Mod.

On remainder-
man.

42; *Druce v. Denison*, 6 Ves. 385. An agreement for a lease, under a leasing power, will be good against the remainderman, provided it is a contract to grant such a lease as the power warrants, *Campbell*

On an alien
artificer.

v. Leach, Ambl. 749; *Shannon v. Bradstreet*, 1 Sch. & Lef. 72; *Blore v. Sutton*, 3 Mer. 237. Although leases to alien artificers are void by the 32 H. 8, c. 16, s. 13, yet it has been held, that if an alien

On copyholder.

artificer occupies a house under an agreement, an action for use and occupation will lie against him, 1 Saund. 8, n. 1. Although a copyholder cannot, by the custom of most manors, grant a lease for a longer period than a year, yet a mere agreement to grant a lease, if the lord will give his licence, has been held not to work a forfeiture, 3 Keb. 638; *Doe dem Coore v. Clare*, 2 T. R. 739.

Specific per-
formance.

4. As to parol agreements for a lease, courts of equity will, notwithstanding the Statute of Frauds, enforce specific performance,

where by so doing they discourage fraud and perjury, which it was the object of the statute to prevent, 1 Eq. Ca. Ab. 19; 2 Ch. Ca. 135; 1 Vern. 151; 2 Freem. 268. For a Lease.

5. Agreements for a lease should be clear and explicit on all material points. This is so much the more important as it has been expressly decided that nothing can be added by parol to an agreement which is reduced into writing, 1 Sugd. V. & P. 10th ed. 218; Dig. p. ii. tit. FRAUDS (STATUTE OF). Where an agreement omits to specify the term or number of years for which the lease is to be granted, or if the rent be not specified, or the time when the term is to commence is omitted, or there is no mention respecting the payment of taxes, no parol evidence can be adduced to supply the omission, *Clinan v. Cooke*, 1 Sch. & Lef. 22; *Woollam v. Hearn*, 7 Ves. 221; *Pym v. Blackburne*, 3 Ves. 34; *Rich v. Jackson*, 4 B. C. C. 514; *The Marquis of Townsend v. Stangroom*, 6 Ves. 334, n. So in an agreement for a building lease, the nature of the building must be specified, or the agreement cannot be enforced, *Moseley v. Virgin*, 3 Ves. 184. Agreements ought to be explicit.

6. A covenant against assigning or under-letting is not deemed a usual covenant, and must therefore be expressly stipulated in the contract, if it is intended to be inserted in the lease, *Henderson v. Hay*, 3 B. C. C. 632; *Vere v. Loveden*, 12 Ves. 179; *Church v. Brown*, 15 Ves. 258. So under a covenant to repair, a lessee will be liable to rebuild if a house is burnt down, unless the clause be added, "damage by fire or tempest, or other inevitable accidents excepted," *Bullock v. Dommitt*, 6 T. R. 650; *Pym v. Blackburne*, 3 Ves. 34. It is now usual to insert a covenant for insurance by the lessee, which obviates this question; but a tenant will still be liable under his covenant to pay rent, although the house is burnt down, unless it be stipulated in the contract that there should be a suspension of rent in case of accidents by fire, *All. 27*; *Monk v. Cooper*, 2 Stra. 763; *Belfour v. Weston*, 1 T. R. 312; *Baker v. Holzappel*, 4 Taunt. 45; *Holzappel v. Baker*, 18 Ves. 115. And the tenant has no equity to compel his landlord to expend the money received from an insurance office in rebuilding, *Leeds v. Cheetham*, 1 Sim. 146; his only remedy in that case being to give notice to quit, *Pindar v. Ainsley*, cited 1 T. R. 312; *Pym v. Blackburne*, *sup.* Covenants not to assign.
A reservation of rent "free from all and all manner of taxes" is now held to extend to the land-tax and all taxes subsequently imposed, *Bradbury v. Wright*, Dougl. 602; *Amfield v. White*, 1 R. & M. 246; see 5 & 6 Vict. c. 35; Dig. p. ii. tit. PROPERTY TAX. To repair.
Where any exception is intended to be made, it ought to be To pay rent.
To pay taxes.

<u>For a Lease.</u>	expressly stipulated in the agreement. An agreement for a lease contains no implied engagement for general warranty of the land, nor for delivery of an abstract of the lessor's title, <i>Gwillim v. Stone</i> , 3 Taunt. 433; <i>Temple v. Brown</i> , 6 ib. 60. The right of the lessee to inspect the lessor's title is however admitted in all cases, <i>Waring v. Mackreth</i> , Forr. 138; except in the case of a bishop, <i>Fane v. Spenser</i> , 2 Madd. 438; and specific performance of an agreement will not be enforced when the title is not clearly made out, a lessee being considered as a purchaser, <i>pro tanto</i> , <i>Fildes v. Hooker</i> , 2 Mer. 424. But as in many cases lessors may object to produce their title, and in others it may be of great importance to the lessee to be assured of the title of his lessor, care should be taken to make this a part of the contract wherever the interests of either party require it.
For production of lessor's title.	
Duration of term.	7. On the principle that deeds ought to be construed most in favour of the grantee, it has been decided, that where an agreement contains a power to determine a lease at the end of seven, fourteen, or twenty-one years, it shall be in the power of the lessee to determine, and not of the lessor, unless it be expressly so stipulated, <i>Dane v. Spurrier</i> , 3 B. & P. 399; <i>Doe v. Dixon</i> , 9 E. 15; <i>Price v. Dyer</i> , 17 Ves. 363.
Usual covenants.	8. Under the clause "usual covenants" are to be understood such as are usual in reference to the nature of the property, the term "usual" being the same as "reasonable," "fair," Prec. Ch. 25. Where, in an agreement for a lease, it is stipulated that it shall contain "such covenants as are usual in leases of lands" &c. in the neighbourhood, it appears that a court of equity will enforce specific performance, <i>Boardman v. Mostyn</i> , 6 Ves. 467. As a school has been held to come under the general clause, "not to carry on any trade," it must be expressly stipulated, if any exception is to be made. Likewise, as it appears doubtful whether, if a house be destroyed before the tenancy commences, a person shall be bound by his contract, it is advisable to make provision for this event in the agreement, <i>Phillipson v. Leigh</i> , 1 Esp. 397.
Not to carry on any trade.	
As to intervening accidents.	
Exemption from stamp duty.	9. A memorandum or agreement for granting a lease or tack at rack rent, under the yearly rent of 5 <i>l.</i> , is exempted from the usual agreement stamp; but it has been held that such an agreement is not within the exception, if the interest agreed for be a beneficial one, <i>Doe v. Boulcot</i> , 2 Esp. 595. (As to Leases, see further, <i>post</i> , LEASES.)



No. LIX.

Agreement for the Lease of a House.
(General Precedent.)

No. LIX.
*Lease of a
House.*

of &c. (see *ante*, No. XLVI.) Betn (*lessor*) of &c. of Parties.
and (*lessee*) of &c. of the or. pt whby the sd (*lessor*)
indenture of lease to be executed on or before
ensuing to demise and let unto the sd (*lessee*) *All that* Lessor agrees
tenmt with the coach-house stable garden &c. (*Here* to demise.
parcels particularly.) *To hold* the same to the sd Term.
s exrs and ads from day next ensuing for the
yrs (a) at the yrly rent of £ clear of all Rent.
iammentary parochial or orwise (b) and paye quarterly
ur usual festivals In which lease shall be contained Covenants on
he pt of the sd (*lessee*) to pay the rent (c) to repair the the part of the
and to deliver up the same at the end of the sd term lessee to pay
und tenantable repair (e) *And also* to insure the sd To insure.
m loss by fire during the sd term in one of the insurance
London or Westminster to be approved of by the sd
r the sum of £ *And also* to rebuild or repair the To rebuild.
if destroyed or damaged by fire or otherwise *And* To repair.
o assign (f) or underlet the sd preses witht the licence
(*lessor*) with all or. usual (g) and reasone covts and
or the re-entry of the sd (*lessor*) his hrs and ass in case
ymt of the rent for the space of days after either
days of payment or of the non-performance of the

terminable at the end of seven, fourteen, or twenty-one years." And Proviso for de-
greed, add "at the will as well of the said (*lessor*) as of the said termining the
Sect. 7. lease.
cept the land-tax or sewers-rate," &c. (*as the case may be.*) Sect. 6.
ly and every year during the sd term unless the house should be Suspension of
or destroyed by any inevitable accident." Sect. 6. rent.
usual to insert the exception, "damages by fire tempest and other Lessee not to
ccidents excepted." Sect. 6. rebuild.
e covenant to insure be omitted, and the above exception be inserted,
except as last excepted."
o this covenant, see sect. 6. And also, if it be so agreed, add "nor
suffer to be carried on upon the sd premises any kind of trade," or
sive or noisy trade," &c. See sect. 6.
o usual covenants, see sect. 8.

No. LIX.
*Lease of a
House.*

Covenants on
the part of the
lessor.

Expence of pre-
paring agree-
ment and lease.

covts (a) *And that there shall also be contd in the sd lease a cort on the pt of the sd (lessor) his hrs exs and ads for quiet enjoyment by the sd (lessee) his exs and ads of the sd preses during the sd term upon paymt of the rent and performance of the covts (b) And (c) it is hby agrd by the sd pties hereto that the expence of preparing these prests and the sd lease and a counterpart thof shall be pd and borne by the sd pties equally And (d) lastly it is mutually agrd by and betn the pties hereto that the destruction of the sd preses by fire or or. cause before the execution of the sd lease shall not (or "shall," as case may be) in anywise alter or vacate this contract.*

In witness whof (e) the sd pties have hereunto set their hand the day of 18

Lease of a House (with or without Furniture) for a Year, and so from Year to Year by way of Agreement—see post, LEASES.

No. LX.
*Lease of a
Farm.*

No. LX.

*Agreement for the Lease of a Farm.
(General Precedent.)*

Articles of &c. (see No. XLVI.) Betn &c. (see last precedent) The sd (lessor) doth hby agree to grant and the sd (lessee) to accept a lease of All that farm and lds belonging to the sd

(a) And if it be a public-house, add "and also a like proviso for the re-entry of the sd (lessor) in case the sd (lessee) shall suffer the sd preses to be converted into a private house or shop, without the consent in writing of the sd (lessor) for that purpose first obtained." This is now so general a stipulation in such leases that it has been held that it would be included under the words "all usual" covenants, *Bennett v. Womack*, 7 B. & C. 627.

(b) As to the production of the lessor's title, see sect. 6.

(c) Or, as is more usual, "the said (lessee) doth hereby agree to accept such lease as afd and to execute a counterpart thereof and to pay the expence of these presents and also of the sd lease and counterpart."

(d) See sect. 6.

(e) If the agreement be entered into by the agent of either party, say "th sd (lessor) or (lessee) has hereunto set his hand by the sd (agent) his attorney lawfully constituted." [As to signing agreements, see AGREEMENTS, s. 5.]

(*lessor*) situate &c. *To hold* the same for the term of yrs
 from the day of now last past at the yrly rent of
 clear of &c. (see No. LIX.) to be paid half yrly on the
 day of and the day of the first payment to be
 made on the day of now next ensuing *And* the sd
 indre of lease shall contain the followg covts on the pt of the sd
 (*lessee*) that is to say To keep the tillage of the sd lds in due
 course of husbandry and to manage the same in a good and
 husbandmanlike manner Not to sow or set more than acres
 of the sd preses with potatoes carrots cabbages or other vege-
 tables except turnips half of which at least are to be fed off and
 not carried off To keep and preserve the buildings gates and
 fences belonging to the sd preses in good and sufficient repair
 during the sd term [except the same be damaged by fire or any
 or. inevitable accident] To cleanse and scour yrly roods
 of hedges and ditches where it is most wanted Not to grub up
 destroy or injure any of the trees growing on the sd preses Not
 to sell any straw hay or manure during the sd term To give a
 fresh coat of manure to evy acre of the arable ld once in
 yrs and to evy acre of the pasture ld once in yrs To allow
 the gamekeeper and bailiffs of the sd (*lessor*) to come upon any
 pt of the sd grounds hby demised at any time he or they may
 think proper for the purpose of hunting shooting coursing or
 killing of game (*add covenant to insure, not to assign, for re-
 entry on non-payment of rent &c. as in the last precedent*) *And*
 also the following covts on the pt of the sd (*lessor*) That the sd
 (*lessee*) may at all times dig marl and clay for the improvement
 of the lds and also sufficient gravel to keep the roads in repair
And also that he may cut underwood and brushwood and lop
 pollard-trees above the age of for reasonable estover and
 as much rough timber as may be needful for the repairs of the
 sd preses *And also (covenant for quiet enjoyment, as in the last
 precedent).* *In witness &c.* (see *ante*, No. XLVI.)

No. LIX.
*Lease of a
 Farm.*

Covenants in
 the lease on the
 part of the les-
 see.

Covenants on
 the part of the
 lessor.

*Agreement by Trustees for letting Premises during the Minority
 of a Child, see post, LEASES.*

No. LXI.
To Let Fur-
 nished House.

No. LXI.

Agreement to Let a Furnished House or Apartments.

Obs. A covenant that the landlord may distrain for rent is not necessary in an instrument of this kind, as it is held that a distress may be had upon any goods of the tenant, as well for furnished as unfurnished lodgings, *Newman v. Anderton*, 2 N. R. 242.

Memorandum of an agreement Betn (*lessor*) of &c. of the one pt and (*lessee*) of &c. of the or. pt as follows. *That* the sd (*lessor*) agrees to let and the sd (*lessee*) to take *all that* messuage or dwelling-house situate &c. (or "*all those* the first and second floors belonging to &c." *as the case may be*) *togr* with all the furniture fixtures crockery and all other things mentioned and comprised in the schedule hereunder written for the space of months to be computed from the date of these presents at the rent of £ per quarter (or "mth") [to be pd quarterly (or "monthly")] *And* the sd (*lessee*) agrees that at the expiration of the sd mths he the sd (*lessee*) shall and will deliver up the sd dwelling-house (or "first and second floors &c.") *togr* with the fixtures and furniture as afd in as good a condon as the same now are rease wear and tear thof excepted and shall and will replace any of the crockery and china or or. utensils that shall be broken or orwise damaged. *In witness* &c. (see *ante*, No. XLVI.)

The schedule or inventory referred to in the above agreement.

No. LXII.
Building Lease.

No. LXII.

Agreement for a Building Lease or Building Leases.
(General Precedent.)

Parties.
 Agreement to
 grant leases at
 certain periods.

Articles of &c. (see *ante*, No. XLVI.) as follow that is to say First the sd (*lessor*) in conson of the rents and covts hinaft mentd doth hby agree with the sd (*lessee*) his exs ads and ass That when and so soon as the sd messes or tents hinaft mentd shall be built and covrd in the areas thof formed and the foot and carriage ways and pavements finished as hinafter is mentd to the approbation of the surveyor of the sd (*lessor*) then he the

sd (*lessor*) shall and will by good and sufficient indres of lease to be prepared by the solicitor of the sd (*lessor*) at the costs and chas of the sd (*lessee*) grant and demise unto the sd (*lessee*) his exs ads and ass *All that* piece or pcel of ground &c. situate &c. which sd pieces or pcels of grd are respdy delineated in the plan hereunto annexed and are therein marked with letters A A A &c. and also the sevl messes or tents to be erected and built hereon with their appts for the term of ninety-nine yrs to be computed from next ensuing at the sevl rents followg that to say for the grd whereon the six houses are as hinaft agrd to be erected within three yrs from 18 at the rent of a peppercorn for the first three yrs and at the sevl yrly rents to be apporstd as hinaft is mentd amounting togr in the whole to the yrly rent or sum of £ during the remr of the sd intended term And for the grd whereon the six houses are as hinaft agrd to be erected within four yrs from &c. And for the grd &c. (*here set out as before, varying in the numbers of houses, yrs, and rents*) the same rents amounting in the whole to the sum of £ to be pd quarterly clear of the ld-tax sewers-rate and all or. taxes rates assessments and impositions whatsr parliamentary parochial or orwise which the sd preses are or may hft be liable to (a) in conson whof the sd (*lessee*) doth for himself his exs ads and ass covt promise and agree with and to the sd (*lessor*) his hrs and ass in manner followg that is to say that he the sd (*lessee*) his exs or ads shall and will at his and their own proper costs and chas under the inspection and to the approbation of the surveyor of the sd (*lessor*) well and substantially build and cover in on the sd pieces or pcels of grd second-rate messes or tents within the respive periods followg that is to say six messes or tents on the piece or pcel of grd &c. (*here set out the buildings on the several pieces or parcels of ground, and the times when they are to be built and covered in*) which sd messes or tents shall be built and finished conformably in every respect to the

No. LXII.
Building Lease.

Parcels.

Term.

Rents.

Payable quarterly, clear of all taxes.

Agreement by lessee to build and cover in certain messuages,

conformably to the plan,

(a) If it be so agreed, say, "And furr that the sd (*lessor*) his hrs or ass shall at his own expence within days from the date hereof furnish the solicitor of the said (*lessee*) with an abstract of his title to the sd pieces or pcels of ld and also permit him to inspect the deeds and evidences thof so far as may be requisite to shew the authority of him the sd (*lessor*) to grant the sd leases in conson whof &c." As to this clause, see AGREEMENTS for a Lease, sect. 6.

No. LXII.
Building Lease.

plan and elevation drawn in the margin of these prests and the sevl floors or stories thof shall be of the sevl heights in the clear followg that is to say the basement story feet &c. and they shall be feet in front and feet in depth. *And also* that the sd houses shall be built with hard bricks and all or. materials equally good and shall be carried up and continued in evy respect agreeably to the Act of Parliament for building houses in the cities of London and Westminster. *And* the sd (*lessee*) his exs or ads shall and will make areas to the sd houses feet wide in the clear and inclose the same with a Portland stone kirb and iron rails. *And* shall slate the roofs of the houses and close board the same and make good lead or iron water-pipes to convey the water into the drains. *And also* make a footway to the sd sevl houses feet in width and pave the same with good Yorkshire paving and a granite kirb. *And also* pave the carriage-way in front of the sd houses. And it is hereby further agreed that the sd rent shall be apportioned and divided in the leases so to be granted as afd at the rate of shillings per foot on the front of each house unless the sd (*lessor*) his hrs or ass and the sd (*lessee*) his exs or ads shall agree that the same shall be orwise apportioned. *And* the sd (*lessee*) doth also hby agree to accept such leases to be granted as afd and to exte counterparts thof and to pay the exps of preparing these prests and the sd leases and counterparts (a). *And* in the sd leases shall be contd the followg covts on the pt of the sd (*lessee*) that is to say to complete the sd messes or tents in a substantial and workmanlike manner with all proper fixtures and fastenings to the same. *Also* to pay the sd rent and the ld-tax and all or. taxes rates assessments and impositions whatsr payable in respect of the sd preses hby agrd to be demised as afd. *Also* to repair amend support and keep the same preses at all times during the sd term with or witht notice from the sd (*lessor*) his hrs or ass in good and substantial repair. *Also* to paint the external wood and iron work of the same preses twice in oil-colours evy fourth yr. *Also* to insure the preses for the full value of so much thof as can be damaged by fire in some public

with good materials;
to make areas;
to slate the roofs;
to make foot-ways and pavements;
to pave carriage-ways.
Apportionment of rents.
Covenants in leases.
To finish the buildings;
to pay rent and taxes;
to repair;
to paint;
to insure;

(a) Sometimes, instead of enumerating the covenants, it may be only necessary to say, "All such covts provoes and agrnts as are inserted in the lease granted by the sd (*lessor*) to A. B. &c. except &c." (*as the case may be.*)

office of insurance from fire in London or Westminster and to keep the same so insured during the sd term and to produce and show to the sd (*lessor*) his hrs or ass or his or their steward agent or receiver of rents for the time being yrly and evy yr the rects given by or on the behalf of such office acknowledging the payment of the premiums on the policy whby the same preses are to be insured for the succeeding yr. *And also* in case any of the dwelling-houses erections or buildings shd be destroyed by fire to rebuild or substantially repair the same according to the original plan. *Also* to pay a fair and just proportion of all exps and chas for renewing or repairing pavements renewing cleansing or repairing walls gutters pipes drains and water-courses which shall be used in common by the occupier of the demised preses and the occupiers of any other messes or dwelling-houses already erected or hereafter to be erected on any pt of the now este of the sd (*lessor*) or of any or. psn near or adjoining thto. *Also* to leave the preses at the end of the sd term hby agrd to be demised in good and substantial repair togr with all marble and or. chimney-pieces mantle-pieces hearths covings jambs foot-pieces and slabs sash and or. windows casements window-shutters doors locks keys bolts bars and all or. fastenings whatsr also marble and or. water-closets cisterns and things thereunto belonging and all wainscot partitions fixed presses dressers shelves drawers pipes pumps posts pales and rails and or. fixtures fixed or fastened to the preses or which shall be found thereon or on any part thof during the last seven years of the sd term. *Also* to permit the sd (*lessor*) his hrs or ass and his or their respive agents surveyors and workmen to enter upon the sd preses hby agrd to be demised at any time or times during the sd term for the purpe of surveying the same and examing if any and what repairs are or may be wanting and to repair within three calr mnths to the approbation and satisfaction of the surveyor for the time being of the sd (*lessor*) evy defect which shall be found upon such survey and of which notice in writing shall be given at or upon the sd preses. *Also* to permit the sd (*lessor*) his hrs or ass or their respive agents surveyors and workmen to enter into and upon the sd preses or any pt thof at any time or times during the last seven yrs of the sd term for the purpe of taking a schedule or schedules of the fixtures thereon or upon

No. LXII.
Building Lease.

to rebuild in
case of fire;

to contribute
towards repair-
ing pavements,
&c.

to leave pre-
mises in good
repair.

To permit lessor
to survey the
premises.

No. LXII.
Building Lease.

any pt thof. *Also* to prevent sd (*lessee*) his exs ads or ass from cutting maiming or injuring any of the principal timbers or walls of the sd building or from letting or converting the same into any shop for trade or suffering any open or public show of business therein witht the licence of the sd (*lessor*) his hrs or ass in writing for that purpe first had and obtained and from committing or suffering any annoyance to the or. lessees or occupiers of any other messes or dwelling-houses lds and hereds of or belonging to the sd (*lessor*) his hrs or ass near or adjoining to the sd preses hby agrd to be demised. *Also* a clause for re-entry on non-payment of the rent days after each day of payment And all or. clauses covts and agrts usual or necessary to be inserted in leases of the like kind *And also* a covt on the pt of the sd (*lessor*) his hrs and ass for the quiet enjoyment of the preses hby agreed to be demised agst any psn or psns claiming under him or them the sd (*lessee*) his exs ads and ass paying the rents and performing the covts and agrts hby on his pt agrd to be pd done and perfld.

In witness &c. (see *ante*, No. XLVI.)



No. LXIII.
Under-Lease.

No. LXIII.

Agreement from the Lessee to demise Ground held by him under the foregoing Agreement.

Agreement to
let,

Articles of Agreement made and entered into Betn (*lessee*) of &c. of the one pt and (*under-lessees*) of &c. of the or. pt as follow The sd (*L.*) in conson of the rent and covts hinaft agrd to be pd and perfld doth hby agree to let unto them the sd (*U.*) and each of them their respive exs ads or ass when and as soon as they shall have erected and built the messes and tents hinaft covd by them to be erected and he the sd (*L.*) shall be lfully enabled thereunto to grant and exte to them a good and valid lease or demise by indre of *All that* &c. as the same is more parlarly described in the plan drawn in the margin of these prests with all ways &c. and apts whatsr to the sd preses belonging or anywise appertaining *To hold* the same piece or parcel &c. unto the sd (*U.*) their respive exs ads and ass as

tenants in common and not as jt tenants from now last
past for and during and until the full end and term of yrs
and three quarters of another yr at and under the yrly rent of
£ payable quarterly for the first three yrs of the sd term and
at and under the yrly rent of £ paye quarterly during the
then remr of the sd term clear of all taxes &c. *And* in such
lease shall be contd all and every the like covts clauses provos
condons restrictions and agrts as are contd in the lease by virtue
whof the sd (L.) shall then hold the sd preses [except &c.]
And also a covt for the sd (L.) his exs ads and ass to indemnify
hem the sd (U.) their exs ads and ass respily from the paymt of
any or. or formr rent or rents than those which shall be reserved
by the sd intended lease and from all costs and dams by reason
of the non-paymt theof and all or. demands whatsr *And* the
sd (U.) for themselves and their respive exs &c. do hby agree
with the sd (L.) his &c. to take the sd preses &c. from &c. for
the sd term at the yrly rents afd and that they shall and will
pay the sd rents in time and manner afd clear of all taxes &c.
as afd *And also* shall within the space of yrs to be com-
puted from the day of last past erect build and set up
upon the sd piece or pcl of grd hby agrd to be demised one
messe or tent conformably in evy respect to the plan &c. (*see*
last precedent) *And also* that the sd house shall be built &c.
And that the sd (U.) shall and will make areas &c. and slate
&c. *And also* make a footway &c. *And also* pave &c. *And*
the sd (U.) do also hby agree to accept &c. (*see last precedent*)
And the sd (L.) doth hby furr agree with the sd (U.) that they
the sd (U.) well and truly paying the afd yrly rents and per-
forming and keeping all and singr the covts on their pts and
behaves hinbefe expsd shall and will until the sd (L.) shall
duly exte and deliver to them or one of them the sd intended
lease peaceably and quietly have hold occupy and enjoy the
afd piece witht any lful let suit molestation or interruption of
him the sd (L.) his exs ads or ass or any or. psn or psns whomsr
claiming or to claim by from or under him or them. *In witness*
&c.—(*see* No. XLV).

No. LXIII.
Under-Lease.

—◆—
Agreement to let a Field for Building on—see post, LEASES.
—◆—

No. LXIV.
*To occupy a
 Cottage.*

No. LXIV.

Agreement to occupy a Cottage.

Leave to occupy
 while employed
 by lessor.

It is agrd the day of 18 Between A. B. of &c.
 of the one pt and C. D. of &c. of the other pt as follows That
 the sd C. D. shall and may occupy the cottage of the sd A. B.
 situate in afd late in the occupn of with its appts
 for and during so long time as he the sd C. D. shall work for
 the sd A. B. and no longer and that when the sd A. B. shall
 cease to employ him the sd C. D. he the sd C. D. shall and will
 forthwith quit and yield up the posson of the sd cottage with the
 appts unto the sd A. B. And if the sd C. D. fail or neglect so
 to do it shall be lful for the sd A. B. and his ass or any psn or
 psns whom he or they may appt to enter into the sd cottage
 and to turn and put out the sd C. D. and his family and furni-
 ture and or. things in the same manner as he might have done
 under a writ of posson. *Witness &c.*

Lessor may
 turn out tenant.

Witness to the
 signatures

Agreement by
 tenant to give
 up cottage.

Mr. A. B. having agrd that I may occupy his cottage situate
 at late in the occupn of while I work for him I
 hby promise to pay him the sum of £20 if I neglect or delay to
 quit and yield up the posson of the sd cottage after I shall have
 ceased to work for him or he shall have discharged me from
 his service. *Witness my hand (or "my mark") &c.*

Witness

:

ARTICLES OF AGREEMENT BEFORE MARRIAGE.

- | | |
|---|---|
| 1. <i>Validity of Articles.</i> | 3. <i>Settlement according to the Articles.</i> |
| 2. <i>Parol Agreements supported in Equity.</i> | 4. <i>What can and cannot be added to the Articles.</i> |

Validity of
 articles.

SECT. 1. Where the minority of either of the parties, or any other
 circumstance, prevents the immediate execution of the settlement,
 articles are sometimes entered into as a preliminary to a future settle-
 ment; and if they be put in writing and signed by the parties or

AGREEMENTS.

1.

Some person duly authorized in that behalf, as the statute requires, they will be valid. Nor is it necessary that they should be drawn up in the form of an agreement to make them binding in equity. Bonds entered into for making settlements are considered as good marriage articles, *Prec. Chan.* 237; *Cannel v. Buckle*, 2 P. Wms. 43. So likewise letters, provided they contain an absolute promise, and sufficiently define the terms of agreement, *Randal v. Morgan*, 2 Ves. 67; *Prec. Chan.* 526, 561; 2 Vern. 322; *Cooke v. Tombs*, Anstr. 420.

2. If an agreement intended to be reduced into writing, is prevented by fraud from being so done, equity will compel a specific performance, *Prec. Chan.* 526. So likewise a parol agreement in part performed, *Taylor v. Beech*, 1 Ves. 227. But the acts which are considered to amount to a part performance must be such as could be done with no other view than to perform the agreement, 1 Fonbl. Eq. 187, n.; 1 Sugd. V. & P. 199, 10th edit.

Parol agreement supported in equity.

3. Articles being, for the most part, little more than heads or minutes of an agreement, cannot be followed in all respects literally; but if a settlement, in pursuance of articles, depart from their spirit and import, it will be deemed an imperfect execution of the articles, and be rectified in a court of equity, *West v. Erissey*, 2 P. Wms. 353; *Randall v. Willis*, 5 Ves. 273. Wherever, therefore, it appears from the marriage articles that a strict settlement was intended, although it be not expressed in positive terms, a court of equity will execute the articles in strict settlement, *Trevor v. Trevor*, 1 P. Wms. 622; and 2 B. P. C. 122.

Settlement according to articles.

4. Where, in articles for a settlement, there is no express declaration that the usual powers of sale should be inserted, such a power, it seems, cannot be inserted, *Wheate v. Hall*, 17 Ves. 80; Sugd. Pow. 178, 6th edit. But where marriage articles contained a clause for all usual powers, it has been decided, that powers of sale and exchange come within this clause, and ought to be inserted in the settlement, *Peake v. Penlington*, 2 Ves. & B. 311. (As to settlements, see further SETTLEMENTS.)

What can or cannot be added to the articles.

No. LXV.

No. LXV

*Articles for a Settlement of the Freehold, Copyhold, and
Personal Property of the intended Wife.*

Marriage
Articles.

This Indenture made the day of in the
year of the reign of &c. and in the year of our Lord 18

Parties.

No. LXV. <i>Marriage Articles.</i>	<i>Between (Intended Wife) spinster &c. of the first part (Guardian or Father) of &c. of the second part (Intended Husband) of &c. of the third part and (Trustees) of the fourth part. Whas a marre is intended to be shortly had and solemnized betn the sd (I. H.) and sd (I. W.) And whas the sd (I. W.) will attain her age of twenty-one years the day of next ensuing And whas by the last will and testament of W. C. late of &c. deceased bearing date on or about &c. and several codicils thereto &c. the sd (I. W.) is seised of or intituled to divers freehd and copyhd estes and is possessed of or intituled to a share of personal estate to a considerable amount and eventually may become seised or possessed of or intituled to or. freehd copyhd and psnl estes under and by virtue of the same last will and codicils thereto. And whas on the treaty for the sd marre it was agrd by and betn the sd (I. W.) and (I. H.) with the approbation of the sd (guardian) testified by his signing and sealing these prests that the sd freehd copyhd and psnl estes or the share or respive shares of the sd psnl este of which the sd (I. W.) is or from time to time shall be or become seised of or intituled to under or by virtue of the sd will and testament and codicils as afd shall be settled upon the trusts and for the ends intents and purps and under and subject to the powers provoes declons and agrmts hnfr directed and agrd to be limited expsed and declod and concerning the same. Now this Indenture witnesseth That in contemplation and conson of the sd intended marre and for making some provision for the sd (I. H.) and (I. W.) resply during their respive lives and for the issue [if any] of the sd intended marre it is hby declod and agrd by and betn the pties to these prests to be the intent and meaning of them and these prests and the sd (I. H.) with the consent of the sd (I. W.) and (guardian) testified as afd Doth hby for himself his hrs exs and ads covt and agree with the said (T.) their exs ads and ass and the sd (I. W.) doth hby declare direct and appt that in case the sd intended marre shall be solemnized Then immly after the solemnization of the same the sd freehd and copyhd and also the sd psnl este and the rents divs int and income shall be held upon the trusts hnafr mentd And that he the sd (I. H.) and the sd (I. W.) his intended wife shall within three calr mths after the sd (I. W.) shall attain her age of 21 yrs at the costs and</i>
Recital of agreement for the marriage.	
Lady will at- tain her age, &c. ;	
is seised of freehold estates, &c. under a will.	
Agreement that the lady's property shall be settled.	
Testatum.	
Husband and wife to concur	

chas in all things of the sd (*I. H.*) make do and exte all such deeds and assures whatsr as shall become necessary and proper for conveying and assuring unto or vesting in the sd (*T.*) or the survivor of them his hrs exs and ass the sd freehd and copyhd messes &c. and the sd psnl este or pts or shares theof of which the sd (*I. W.*) now is or at any time or times hereafter may be or become possessed or to which she shall or may become intitled under or by virtue of the sd in part recited will and codicils of the sd W. C. upon the trusts and under and subject to the powers provos declons and agrts hinafter mentd that is to say *Upon trust* That they the sd (*T.*) or the survivor of them or the hrs exs or ads of such survivor do and shall from time to time during the jt lives of the sd (*I. W.*) and (*I. H.*) with their consent in writing or the consent of the survivor of them and after the death of the survivor of them then in their or his discretion or of their proper authty make any lease or leases in possn at an improved yrly rent or rents of all or any pt of the sd freehd or copyhd estes *And* upon the request and with the consent of the sd (*I. H.*) and (*I. W.*) or the survivor of them as sd make sale and absolutely dispose of the sd freehds and copyhds or any of them or any pt thof and convey and surrender the same to the purchaser or purchasers thof and receive into their or his hands the money arising from such sale or sales *And upon this further trust* That they the sd (*trustees*) or the survivor &c. his or hr hrs &c. do and shall from time to time during the jt lives of the said (*I. H.*) and (*I. W.*) or the survivor of them and after their dece in the discretion and of the proper authty of them the sd (*trustees*) or the survivor &c. sell and dispose of and convert into money the sd psnl este of the sd (*I. W.*) or any pt thof and with such consent and in such discretion as afd lay out and invest the money arising from such sale or sales and also the money arising from the sale of all or any of the sd freehds and copyhds in or upon any govt or real secties in Gt. Britain *And* do and shall stand and be possd of the sd freehds and copyhds in the mean time until such shall be sold *And* stand and be possd of the sd psnl este and the produce thof and also of the produce of the said freehds and copyhds in case the same shall be sold and of the stocks funds and secties in and upon which such produce of real and

No. LXV.
*Marriage
Articles.*

in conveying
the freehold &c.
of the wife to
trustees.

Upon trust.

To make leases;

To sell the real
estates.

To convert per-
sonal estate
into money.

To stand pos-
sessed of the
monies arising
from such sales
&c.

No. LXV.
*Marriage
Articles.*

In trust to permit husband to receive one moiety, and stand possessed of the other moiety for the wife.

If wife survive, to receive all the dividends &c. for her.

Money arising from sale of freeholds to be considered as money.

psnl estes as afd shall from time to time be invested *Upon trust* to permit the sd (*I. H.*) during his natural life to rece and take one moiety or equal half pt of all the divids int and income which shall become due for the sd trust mos stocks funds and secties *And* do and shall during the jt lives of the sd (*I. H.*) and (*I. W.*) retain and take the or. moiety or half pt of the same divds int and income and stand and be possd thof *Upon trust* for the separate use of the said (*I. W.*) independently of him the sd (*I. H.*) *And* in case the sd (*I. H.*) shall die in the life-time of the sd (*I. W.*) then from and after the death of the sd (*I. H.*) *Upon this further trust* That the sd (*T.*) or the survor &c. do and shall permit the sd (*I. W.*) and her ass to rece and take all the divds int and income which shall become due for the sd trust mos stocks funds and secties from thenceforth during her natural life *And* after the death of the sd (*I. W.*) and (*I. H.*) and the survor of them *Then upon trust* for such children as the sd (*I. H.*) and (*I. W.*) shall jtly appt and in deflt of apptmt as the sd (*I. W.*) if she survive shall appt by deed or will *And* in deflt of apptmt then to all the chn equally share and share alike *And* in case there shall be no chn *Then upon this further trust* That they the sd (*trustees*) or the survor &c. shall convey and assure the sd freehds and copyhds unless sold in the mean time unto and to the use of the sd (*I. W.*) her hrs and ass and do and shall assign and transfer the sd psnl este to her exs ads and ass *And* it is hby decl'd and agr'd That in the sd settlement shall be cont'd a provision That in case all or any pt of the sd freehds and copyhds shall be sold pursuant to the trusts hinbefe cont'd then after such sale or sales shall be made the money arising therefrom shall for all the purps of the intended settlement and agst all psns to be intitld to any bent under the same be considered as fully and effectually to all intents and purps as if the money arising from such sale or sales had been settled as money *And that* in case no such sale or sales as afd shall be made or as far as the same sale or sales shall not extend the same freehds and copyhds shall remain and be considered as real este *And also* a declaration that psns having trust mos shall not be anse for the trustees' misapplication thof *And also* a provision enabling trustees to apply rents &c. in maintenance and advancement of childn *And also* a

use of indemnity to trustees and all other clauses provisions
ons and agrts usually inserted in settlements of a like kind.
itness &c. (see *ante*, No. XLVI.)

No. LXV.
*Marriage
Articles.*

No. LXVI.

No. LXVI.
*Equitable
Mortgage.*

*Agreement that a Person shall hold Title Deeds as a Deposit
and for a Mortgage at some future time.*

¶ 1. It is a rule in equity, grounded on the decision of Lord
Low, in *Russell v. Russell*, 1 B. C. C. 269, that a mere deposit
into an equitable mortgage; but as the question respecting
intentions of the parties has been frequently raised, a writing is
absolutely necessary, in order to prevent litigation.

A mere agreement to mortgage, where there is no deposit of
deeds, will not in equity defeat the legal claims of other parties,
as v. Winchelsea (E.), 1 P. Wms., and ought not therefore to
be substituted in any case for a regular mortgage.

Articles &c. (see *ante*, No. XLVI.) Betn (*Borrower*) of &c.
the one part and (*Lender*) of &c. of the other part *Witness*
it in conson of the sd (*L.*) having on or about the day
instant transferred into the name of the said (*B.*) the
sum of £ 3 per cent. Consolidated Bk Annties the property
the sd (*L.*) for the accommodation of the said (*B.*) and by
of loan to him the sd (*B.*) *Hath* deposited and by these
is *Doth* declare that he hath deposited with the sd (*L.*) and
his hands put the sevl deeds and papers mentd or enumerated
the schedule to these prsts being deeds and papers which
relate to or concern the title of *all* that piece or parcel of ground
situate &c. (*parcels*) with the rights members and appts *To*
intend that the same deeds and the same piece or parcel of
land messe &c. and the fee-simple and inhance thof may be a
due to the sd (*L.*) his exs ads and ass for the transfer by the
B.) and his exs of the sum of £ 3 per cent. Consolidated
Annties as afsd and for the paymt in the mean time by the
B.) his hrs exs ads and ass to the sd (*L.*) his exs &c. of the
sum which would have become payable on or for the sd sum
of £ 3 per cent. &c. if standing transferred in his or their
hands *And* the said (*B.*) doth hereby agree to purchase or

No. LXVI.
*Equitable
Mortgage.*

cause to be purchased the sd sum of £ 3 per cent. Consld Bk Annties and transfer the same and pay the amount of the intermediate divds thereon to the sd (L.) his exs &c. at or on the times hinfese apptd for the transfer and paymt thof resply without any abatement or deduction whatsr And moreover if the sd sum of £ 3 per cent. &c. and amount of divds should remain on this secty at any time after the day of next ensuing then he the sd (B.) his hrs exs or ads shall and will at any time thrafr at his and their own costs and chas upon the request of the sd (L.) his exs &c. by such conveys assignmts and assurs as he or they or their counsel shall in that behalf advise well and effectually convey the sd pce or pcl of grd mense &c. with their and evy of their appts unto the sd (L.) his hrs exs &c. free from all incumbs subject nevss to a provo for redemption thof to be contd in such conveys togr with all or. covs clauses and stipulons as are usual in mortgs of a like kind. In witness &c. (see ante, No. XLVI.)

No. LXVII.
*Mortgage,
(Interest).*

No. LXVII.

Agreement in a Mortgage for Renewal of a Lease, and that Mortgagor will take 4l. 10s. per Cent. for his Debt on prompt Payment.

That he the sd (mtgor) his hrs exs &c. or some of them shall and will at his their or one of their own proper costs and chas from time to time at the usual and accustd times for the renewal apply to and obtain from the Dean and Chapter of B. a lease or leases of the lds heredit and preses mentd and intended to be resply assignd and assurd with the appts for a furr term or terms of years and under such and the like rents covts and agrts as are reserved and contd in the present lease so made and grtd thof as afd and shall and will from time to time and at the usual times for such renewals as afd continue to apply for the like new lease and leases during and so long as the sd sum of £ or any pt thof shall remain or be chgbe upon the sd preses And also that he the sd (mtgor) his hrs exs or ads or some of them shall and will well and truly pay or cause to be pd unto the sd Dean and Chapter &c. as well the rent re-

rved by the sd indre of lease and the rent or rents to be re-
 rved by any future lease or leases as all and evy the fine or
 es chas and exps of such renewal or renewals as afd which
 new lease or leases so to be made and granted of the sd pres
 afd shall immly upon the making and exting thof be from
 ne to time assgnd and transfd by the sd (*mtgor*) his exs ads
 ass unto the sd (*mtgee*) his exs ads or ass under the like
 rts provos and agts as are in these prests expasd and contd
 and concerning the sd lease and preses hby assd or mentd so
 be *And moreover* that in case the sd (*mtgor*) his hrs exs or
 ls shall decline or neglect to apply for and obtain such new
 ase or leases at the usual and accustomed times for applying
 r the same or within the space of six cal mths then it shall
 nd may be lful to and for the sd (*mtgee*) his exs ads or ass to
 pply for and obtain the same from the Dean &c. and to pay
 be fine or fines and all or. the chas and exps of such renewal
 r renewals all which sd fines chas and exps with int. for the
 ame after the rate of £ for every 100*l.* for a year from the
 time or times of payg or advancing the same shall be chagd
 upon the sd preses and evy pt thof so reld and conveyed by
 the sd (*mtgor*) unto and to the use of the sd (*mtgee*) and his
 hrs as afd *And* that no pt of the sd manor &c. in the sd indre
 of lease and rele and in these prests comprisd shall be redeemed
 or redeembe by the sd (*mtgor*) his hrs &c. or any of them but
 upon paymt of all and evy the sum and sums of money which
 shall be advanced and pd by the sd (*mtgee*) his exs &c. for obtg
 such renewal or renewals togr with int. for the same from the
 time or times of advancement thof as afd as of the sd principal
 sum of £ and int. any thing thin or hin in any wise to
 contry notwithstg *And* it is hby decld and agrd that until deft
 shall be made of or in paymt of the sd £ and int. or of
 some pt thof conty to the afd provo and condon for paymt of
 the same it shall and may be lful to and for the sd (*mtgor*) his
 exs &c. peaceably and quietly to hold and enjoy the sd rectory
 &c. mentd and intended to be hby assd and assurd and evy pt
 thof with the appts and to rece and take have hold and enjoy
 all and evy the rents bents and advants thof and of evy pt thof
 to his and their own use witht any let suit molestation interrup-
 tion or disturbance of or by the sd (*mtgee*) his exs &c. or any of

No, LXVII.
 Mortgage,
 (Interest).

No. LXVII.
Mortgage.
(Interest).

them or of or by any psn claiming or to claim by from unde or in trust for him or them or any of them and witht any acct to be rendered to him or them for the same *And lastly* it is hby decd and agrd by and betn the pties to these prests and the sd (*mtgee*) for himself his hrs &c. and evy of them doth covt and promise to and with the sd (*mtgor*) his hrs &c. that if the sd (*mtgor*) his hrs &c. or any of them do and shall from time to time well and truly pay or cause to be pd unto the sd (*mtgee*) his exs &c. int. for the sd sum of £ at and after the rate of £ *pr cent.* pr ann. by half yrly paymts then and in such case he the sd (*mtgee*) his exs &c. shall &c. when and so often as such paymt is made as afd but not orwise retain and abate out of evy sum so pd so much as shall reduce the rate of int. for the sd principal sum of £ to £4 10s. *pr cent.* pr ann. or shall and will for such time take int. for the sd principal aftr the rate of £4 10s. *pr cent.* pr ann. the afd provo for paymt or any or. matter or thing to the contry thof in anywise notwithstanding. *In witness &c.* (see *ante*, No. XLVI.)

AGREEMENTS FOR A PARTITION.

- | | |
|---|---|
| 1. <i>Partition by Parol, where good or otherwise.</i> | 3. <i>Agreements sometimes necessary.</i> |
| 2. <i>Effect of a Parol Agreement to hold in Severalty.</i> | 4. <i>Stipulations as to Costs.</i> |

Partition by
parol, where
good or other-
wise.

SECT. 1. At common law, coparceners might make partition by parol without deed, Litt. s. 250; also tenants in common might make partition by parol, if they afterwards executed the partition by livery seisin. A parol partition between joint-tenants of freeholds was n good, Dyer, 350 b; Co. Litt. 169 a; Cro. Eliz. 95. But joint-tenant as well as tenants in common might make partition of a term of years without deed, Dyer, 350 b; Cro. Eliz. 95. The author of the "Commentaries," and after him Mr. Cruise, observe, that "the Statute Frauds has abolished this distinction, and made a deed necessary all cases." It is, however, the more general opinion, that a writ only is necessary on partition by coparceners, and a writing executed with livery of seisin by tenants in common, 2 Comm. 324; 4 Cr Dig. 96, s. 16; *Oakley v. Smith*, Ambl. 368; Allnat on Part. 13

Partition.

In the case of joint-tenants, a deed is always necessary now as it was at common law, whether on partition of corporeal hereditaments, where there must be mutual conveyances, *Johnson v. Wilson*, Willis, 248, or on the partition of incorporeal hereditaments, where an agreement under the hands and seals of the parties is held to be sufficient, 1 *Ld. Raym.* 536, 537; 1 *Salk.* 43. (As to partition by deed, see further, PARTITION.)

2. An agreement between joint-tenants to hold in severalty will operate in equity to sever the joint-tenancy, so that the *jus accrescendi*, or right of survivorship, is destroyed, 2 *Comm.* 185; *Brown v. Raindle*, 3 *Ves. jun.* 256. But it appears that a mere verbal agreement will not be sufficient; there must be some note or writing, 2 *B. C. C.* 220; 1 *Vern.* 472; 2 *Cru. Dig.* 513. So a parol agreement for equality of partition, put in execution and long acquiesced in, if entered into by parties having a right to contract, will be established in equity, *Ireland v. Rittle*, 1 *Atk.* 542. But a partition under an agreement made by the husbands of two joint-tenants will not bind the inheritance of the wives, unless they be parties thereto, *Ireland v. Rittle*, 1 *Atk.* 542; 2 *Cru. Dig.* 513. A parol agreement to make partition by the guardian of an infant tenant in common will be binding, if confirmed by the infant after his coming of age by granting leases or otherwise, *Whaley v. Dawson*, 2 *Sch. & Lef.* 367. Also a parol partition between tenants in tail will be binding on the issue, 2 *Vern.* 233. But it appears that an agreement to make partition of copyhold lands cannot be enforced in a court of equity, if it be made without the privity of the lord, *Oakley v. Smith*, *Ambl.* 368; *S. C. Eden*, 261.

Effect of a parol agreement to hold in severalty.

3. Although joint-tenants and tenants in common are compellable, by the 31 *Hen. 8*, c. 1, and 32 *Hen. 8*, c. 32, to make partition, yet this will not obviate the necessity for an agreement, particularly where delay is likely to arise in executing the partition.

Agreements sometimes necessary.

4. It was formerly held, that, in the absence of all stipulation, the expence was to be borne equally by all parties, however unequal their interest, *Norris v. Le Neve*, 3 *Atk.* 81; *Cornish v. Gest*, 2 *Cox's Cas.* 27. This doctrine appears, however, to have been since overruled, *Calmady v. Culmady*, 2 *Ves. jun.* 568; an express provision on this point ought therefore to be inserted in the agreement.

Stipulations as to costs.

No. LXVIII.
Partition,
(Joint-Tenants).

No. LXVIII.

*Agreement between two Joint-Tenants of Freeholds or
 Copyholds to make Partition.*

<p>Parties.</p> <p>Recital of facts.</p> <p>Agreement to make partition. Testatum.</p> <p>Part of the premises to belong to the one, and part to the other.</p> <p>Arbitrator to determine equality of partition.</p> <p>Parties to execute mutual conveyances.</p> <p>Partition made by commissioners or their umpire.</p>	<p><i>Articles &c. (see ante, No. XLVI.) Betw A. B. of &c. of the one pt and C. D. of &c. of the or. pt Whereas under or by virtue of the last will &c. (or as the case may be) the sd A. B. and C. D. are seised to them and their hrs in equal shares and proportions as joint-tenants in possession of certain messes lds and hereditaments situate at &c. And whereas the sd A. B. and C. D. are desirous of making such partition thof as is hereinafter particularly expressed Now these presents witness and each of them the sd A. B. and C. D. doth for himself resply and for his respive hrs exs and ads agree with the or. of them his hrs &c. in manner following that is to say (a) That the messes &c. situate at &c. shall henceforth become the sole property of the sd A. B. his hrs and ass and the &c. of the sd C. D. &c. And that it shall be referred to (arbitrator) of &c. to settle the equivalent in money or otherwise by way of compensation for equality of partition And that the sd pties will stand and abide by the judgment of the sd (arbitrator) And also that each of them the sd A. B. and C. D. shall and will join and concur (b) in making and doing all such acts deeds conveys and assurs as the or. of them his hrs or ass or his or their counsel shall think necessary for parting and severing the sevl messes lds and hereditaments so devised to them the sd A. B. and C. D. and for conveyg the sd messes lds and hereditaments situate at &c. in sevlty unto the sd A. B. his hrs and ass and the sevl messes lds and hereditaments situate at &c. in sevlty unto the sd C. D.</i></p> <hr/> <p><i>(a) If the partition is to be made by commissioners, instead of this and the subsequent clause, say "That a partition and division of all and singular the sd messes lds and hereditaments into two separate allotments as nearly as may be shall be made by (one commissioner) of &c. a commr nominated by and on behalf of the sd A. B. and (other commissioner) of &c. a commr nominated by and on behalf of the said C. D. or by the umpire to be chosen by them And that the said (C. or their umpire shall apportion each of the allotments in severalty to the sd A. B. and C. D. and decide what sum of money shall be pd for equality of partition &c And also that each of them the sd A. B. and C. D. shall and will join" &c (See above.)</i></p> <p><i>(b) If the lands be copyhold, say "By the licence of the lord or lady for the time being of the sd manor." See Obs. 2.</i></p>
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nd ass *And lastly* that the costs (a) and exps of the
ys and assurs shall be borne and pd by the psn or psns
favour the same shall be made and extd and that all
and exps attending the sd partition shall be borne
etn the sd pties. *In witness &c.* see *ante*, No. XLVI.

No. LXVIII.
*Partition,
(Joint-Tenants.)*
Costs.

No. LXIX.

Agreement between two Joint-Tenants to hold in severalty.

No. LXIX.
*Partition,
(Severalty.)*

s &c. (see No. XLVI.) Betn I. D. of &c. of the one pt
of &c. of the or. pt *Whas* the sd I. D. and C. D. have
yrs exercised and carried on in coptnship the trade of
d as such ptnrs have at different times purchased and
the sevl freehd and leasehd estes mentd or referred to
chedule hereunder written or hereunto annexed marked
letters A. B. and the same have been purchased and
by and out of the capital or stock in trade on acct of
ptnship or jt trade and they are beneficially intitld to
estes in equal shares and proportions *And whas* the
s are desirous of making an equal division of the sd
d leasehd preses betn themselves and for that purpe
eeded to make a valuation thof and having fully con-
e nature and tenure of the different estes comprised in
chedules and the value thof have mutually and finally
ed and agrd that the estes mentd and referred to in the
le marked with the letter A. shall from the day
ow and ensuing be considered as the sole and exclusive
property of and shall henceforth be held in sevlty by
D. and that the estes mentd in the schedule marked
letter B. shall be considered as the sole and exclusive
property of and be held in sevlty by the said C. D.
He presents witness That in pursuance of the sd agrt
giving effect to the same and in conson of the agrt
ontd on the pt of the sd C. D. he the sd I. D. doth
r himself his hrs exs and ads agree with the said C. D.
xs and ads &c. in manner following that is to say

Recital of co-
partnership.

That the parties
have made a di-
vision.

Testatum.

I. D. covenants
to convey and
assure to C. D.
his share;

(a) As to the costs, see sect. 4.

AGREEMENTS.

. LXIX. That he the sd I. D. and evy person claiming and to claim l
 irtition,
 verully.) from through or under him or them shall and will from time t
 time and at all times hrafrt at the rease request and at the cost
 and chas of the sd C. D. his hrs exs or ads make do and exte all
 such acts matters and things assignts conveys and assurs in the
 law as shall be requisite and necessary for assigning conveying
 and assuring the sevl freehd and leasehd heredts referred to in
 the schedule marked with the letter B. and all the este right title
 and int of him the sd I. D. into and out of the same unto and
 to the use of the sd C. D. his hrs exs and ass according to the
 respive nature and tenure thof as he or they shall direct or
 appt so that for the making or doing such assurances the sd
 I. D. be not compelled or compellable to go or travel from the
 place of his usual residence or abode *And furr* That in the
 meantime and until such conveys assigts and assurs shall be
 made or exted as afd it shall be lful for the sd C. D. his hrs exs
 ads and ass from time to time and at all times hereafter accord-
 ing to the respive tenures thof peaceably and quietly to have
 hold occupy possess and enjoy the sevl freehd and leasehd estes
 specified in schedule B. and to rece and take the rents issues
 and profits thof from the day of 18 for his and
 their own exclusive use and bent without any let hinderance or
 interruption of from or by the sd I. D. his hrs exs ads and ass
 or any or. psn or psns claiming or to claim by from through or
 under him them or any of them *And these prsts furr witness*
 That in conson of the agrt hinbefe contd on the pt of the sd
 I. D. he the sd C. D. doth hby for himself &c. covt &c. with
 and to the sd I. D. &c. in manner &c. that he the said C. D
 and evy psn &c. at the rease request and at the cost and chas
 of the sd I. D. &c. make do &c. for conveying assigning and
 assuring the sevl freehd and leasehd heredts mentd and referrec
 to in schedule A. and all the este &c. of him the sd C. D
 into &c. unto and to the use of the sd I. D. &c. so that for the
 making &c. the sd C. D. &c. *And furr* &c. it shall be lful for
 the sd I. D. &c. without any let &c. of or from the sd C. D. &c
In witness &c. see *ante*, No. XLVI.

in the mean-
 for quiet
 ment.

ier tea-
 3;

. covenants
 avey to I. D.

No. LXX.

No. LXX.
Partition,
(Distribution.)

*between Parties intitled under a Will to make equal
Distribution.*

ements of this kind, whether made in the lifetime of the
fter his death, are binding on the parties, and will be
equity, unless the devisee is restrained by the terms of
alienating the estate devised to him, *Wethered v. We-*
m. 183; recognizing *Beckley v. Newland*, 2 P. Wms.
v. *Trevor*, ib. 291; *Harwood v. Tooke*, 1 Madd. Chan.
2 Sim. 192.

re of five pts made between A. B. of &c. of the first
&c. of the second pt, E. F. of &c. of the third pt, G.
the fourth pt, I. K. of &c. of the fifth pt. *Whas (a)*
his last will and testament duly made and extd
date day of *did* give and bequeath all
his goods, chattels, debts, mos and all or. the prsl
ects of him the sd (*testator*) unto the sd (*parties*) in
ures and proportions therein mentioned *And whas*
arisen as to the intentions of the sd (*testator*) as
ie sd will, and the sd (*parties*) parties hereto are de-
eventing all differences and questions which might
ard thereto *Now this Indre witnesseth*, and it is
nd agrd by and betn the pties to these presents that
gular the goods chattels debts mos and all or. the
d effects of the sd (*testator*) shall be divided betn
r and their respive (*b*) exs and ads in equal shares
tions share and share alike, notwithstanding the sd
testamentary writing of him the sd (*testator*) be-
he same to them in a different manner [*or*, as if the

greement be made in the lifetime of the testator recite "Whas
ls seised and possessed of divers freehd and copyhd estes and also
e which the sd (*pties*) expect to be given, devised or bequeathed
in case he die intestate, then the sd (*pties*) or one of them, by
e Statute of Distribution, or by surrender or the custom of the
ome or. ways or means, would become intitled to such freehd and
nd the pal este as afd."
be any real este say "hrs exs &c."

No. LXX.
Partition,
(Distribution.)

sd (*testator*) had died intestate] (*a*). *And further* each of them the sd (*pties*) sevlly for himself and herself and his and her respive hrs exs ads and ass and for and concerning only the acts deeds and defts of himself and herself resply and his or her respive (hrs) exs &c. covt and declare to and with each of the ors. of them sevlly and his or her (hrs) exs &c. that they the sd &c. resply and their respive (hrs) exs &c. shall and will from time to time (*b*) when and as often as they resply shall be thereunto required by any or. or ors. of them his, her, or their (hrs) exs &c. and witht any recompence or conson for the same, but at the costs and chas of the psn by whom such request shall be made, do and exte all such acts deeds and assnmnts in the law whatsr for effectuating sd agrt and more fully and completely confirming the same as their respive counsel shall reasbly advise or require.

In witness &c. see ante, No. XLVI.

AGREEMENTS BETWEEN PRINCIPAL AND AGENT.

- | | |
|---|--|
| 1. <i>Agent when authorized by Writing, and when not. When by Deed or otherwise.</i>
2. <i>Agent must act in the Name of Principal.</i>
3. <i>Principal bound by Acts of Agent.</i>
4. <i>Agent not to exceed his Authority.</i>
5. <i>Agent not answerable for Losses.</i> | 6. <i>Credit when to be given to Agent.</i>
7. <i>Agent cannot bind Principal for his own Debt.</i>
8. <i>Duration of Contract.</i>
9. <i>Compound Interest allowed to Agents.</i>
10. <i>Agents not Partners.</i> |
|---|--|

Agent when
authorized by
writing and
when not.

SECT. 1. By the Statute of Frauds, 29 Car. 2, c. 1, ss. 1, 3, relating to leases, &c., an agent must be authorized by writing to sign any agreement, but by the fourth section an agent may be authorized by

(*a*) If it be so agreed in the lifetime of the testator say "*And further* that all property which shall be given at any time or times hfto to any or either of them the sd (*parties*) shall for all the purps of this agrt be deemed to be the property of the sd (*testator*) to be so divided as afd and the same or the value thof shall be brt into hotchpot and accted for accding to this agrt."

(*b*) If the agreement be made in the lifetime of the testator say "After the dece of the sd (*testator*)."
An agreement of this kind cannot be carried into effect until the death of the testator, and therefore a party is not guilty of laches who waits until then, before he asserts his right, *Wethered v. Wethered*, *ub. sup.* see *Observation*.

arol to treat for or buy an estate, 1 Sugd. V. and P. 186, 10th ed.; and y the seventeenth section he may be authorized in the same manner x the sale of goods. But in every case, as well of special as general gencies, it is highly expedient that the limits and extent of the agent's uthority should be defined by some writing, *Mortlock v. Buller*, 10 es. 310; *Daniel v. Adams*, Ambl. 495. Formerly, every delega- ion of authority must be by deed, Co. Litt. 48, b; 1 Salk. 96; but ince the statute, agreements in writing, though not sealed, are said o have had some better countenance, *Wheeler v. Newton*, Prec. ha. 16; but a power to make or to take livery of seisin, or to do ny matter which concerns the freehold, must be by deed, Co. Litt. 8, b; *Streightz v. Egginton*, 1 Holt, 141. So an authority to exe- ute a deed, *Harrison v. Jackson*, 7 T. R. 209. As to the auctioneer eing the agent of both parties, see Dig. p. ii. tit. AUCTION; also *post*, AUCTIONS.

Principal and Agent.

When by deed or otherwise.

2. Generally speaking, an agent or attorney, who has authority to lo an act, must do it in the name of his principal: thus the execution and delivery of a deed must be in the name of the principal; if it be he execution of the agent only, it is void as to the principal, *Moor*, 70; but the form of words used in the execution is not material, *Wilks v. Bucks*, 2 E. 144; (see further, APPOINTMENT, POWER OF ATTORNEY.) In mercantile transactions there is this difference be- tween a broker and a factor, that the latter is authorized to sell in his own name, but the former is not.

Agent must act in name of prin- cipal.

3. The principal is bound by the acts of the agent in every thing which falls within the scope of his authority, *Webster v. Seekamp*, 4 B. & A. 352. Care ought therefore to be taken, in the penning of such nstruments, that they should not give an authority beyond what was a the contemplation of the principal. Thus, when a broker, who is ot authorized to sell in his own name, sells without disclosing the ame of his principal, he acts beyond the scope of his authority, and s principal is not bound by the contract, *Baring v. Corrie*, 2 B. & . 137.

Principal bound by the acts of his agent.

4. A factor who is the agent in a foreign country of a merchant siding at home, or *e contra*, is mostly authorized by a letter of at- ney, and must pursue his commission strictly, *Mal. Lex Mercat.*

Agent not to exceed his au- thority.

5. Where power is given to the factor in express words, as is ually done, to dispose of the goods as if they were his own, the acts the factor will be excused, although they occasion loss to the prin- pal, *Beawes' Lex Mer.* 47. If the goods which come to his hands ceive damage, but not through his negligence, the principal shall

Agent not an- swerable for losses.

- Principal and Agent.** bear the loss, 4 Co. 84. So likewise, if the factor be robbed, he shall be discharged in account brought against him by his principal, *ib.*
- Credit when to be given by agent.** 6. A bare commission to sell is not sufficient power for the factor to give credit, *Brown v. Staton*, 2 Chit. Rep. 353; and by the general power of doing as if it were his own, he may not give credit for an unreasonable time, 2 Cha. Ca. 57.
- Agent cannot bind principal for his own debt.** 7. A factor cannot bind in effect the property or the goods of his principal, by pledging them as a security for his own debt, though there is a formality of a bill of parcels and a receipt, Stra. 1178. And now by the 6 G. 4, c. 94, s. 3, it is provided that persons taking such goods in pledge or deposit acquire no other right than was possessed by the person pledging the same, and (by s. 7) that agents fraudulently pledging the goods of their principals are deemed guilty of a misdemeanor, punishable by fourteen years' transportation, see further Dig. p. iii. tit. PRINCIPAL AND AGENT.
- Duration of contract.** 8. An agreement with an agent to manage a concern during his life, for a stipulated salary, gives him a right to the advantages of it, although he be afterwards discharged, *Ball v. Coggs*, 1 B. P. C. 140; but an agent is not to employ himself in the affairs of another during the subsistence of the appointment, *Thompson v. Havelock*, 1 Campb. 527.
- Compound interest allowed to agent.** 9. Where an agent advances money for a principal, interest may, contrary to the general rule of law, be computed upon interest, *Bruce v. Hunter*, 3 Campb. 467.
- Agents not partners.** 10. Although, generally speaking, a perception of the profits will constitute a partnership, yet a remuneration made to a traveller, clerk, or agent, out of the sums received by or for his master or principal, does not subject him to the liabilities of a partner, *Benjamin v. Porteus*, 2 H. Bla. 590; *Dry v. Boswell*, 1 Campb. 320; *Cheap v. Cramond*, 4 B. & A. 663.

No. LXXI.

No. LXXI.
Brewer and Managing Clerk.

Agreement between a Brewer and a Managing Clerk.

Obs. Where such agreement must be in writing, see *supra*, sect.

1. As to stamp, see *ante* AGREEMENT, 10.

Clerk agrees to serve for a term. *Articles &c.* (see *ante*, No. XL.) Betw (*principal*) of &c. of the one pt and (*clerk*) of &c. of the or. pt *Witness* That for the common hmufttr contd on the pt of the sd (*P.*) he the sd (*C.*) for himself his exs &c. doth hby covt promise and agree with and

to the sd (P.) that he the sd (C.) shall and will henceforth for
 and during the term of yrs (a) to be computed from the
 day of the date of these prsts if both of them the sd (P.) and
 (C.) shall so long live become be and continue the clerk of him
 he sd (P.) in his trade or business of a common brewer and
 shall and will during the term afd give up his whole time and
 attention to the same in managing conducting superintending
 and improving the same to the utmost of his power and ability.
 And also shall and will during the sd term do and perform all
 such acts matters or things in about or relating to the sd trade
 or business as he the sd (P.) shall from time to time direct order
 or appt And shall not nor will at any time hraft without the
 consent in writing of him the sd (P.) his &c. divulge or make
 known any trusts secrets or dealings of or relating to the sd
 trade or business of him the sd (P.) And also that he the sd
 (C.) shall and will during the sd term be just and faithful to the
 sd (P.) in all his business dealings and transactions whatsr
 And shall and will provide and keep so many bks of acct as
 shall be necessary wherein he shall fairly write and enter all mos
 recd and pd and all goods in the sd trade which shall be bought
 or received sold or delivered out upon credit or orwise and the
 price and prices at which the same shall be bought or sold and
 all or. matters and accts which shall be necessary to manifest the
 state of the sd trade which sd bk or bks of acct shall always
 remain and be kept in the usual office or place of carrying on
 the sd trade And these prests furr witness That in conson of
 the covts hinbefe contd on the pt of the sd (C.) he the sd (P.)
 both hby covt and agree that he the sd (P.) shall and will yrly
 and evy yr during the sd term of yrs determinable as afd
 ell and truly pay unto the sd (C.) by half-yrly paymts on the
 day of and the day of the clear yrly
 sum of £ of &c. witht any deduction whatsr the first half-
 rly paymt thof to be made on the day of And shall
 and will always yrly and evy yr during the sd term pay (b) to
 the sd (C.) over and above the yrly sum of £ so much lful
 money as will amount or be equivalent to pt of the clear gains

No. LXXI.
 Brewer and Ma-
 naging Clerk.

To execute the
 orders of the
 principal ;

to keep his se-
 crets ;

be just and
 faithful ;

keep books of
 account.

Principal agrees
 to pay salary.

and an allow-
 ance in propor-
 tion to the gains
 of the trade.

(a) As to the duration of the contract, see ante, sect. 7.

(b) As to the perception of profits by way of remuneration, see ante, sect. 11.

No. LXXI.
*Broker and Man-
 aging Clerk.*

Principal to be
 at liberty to
 dismiss clerk.

or profits of or arising from the sd trade or business so to be carried on by the sd (C.) as managing clk after deducting the sd sum of £ and all or. debts and dues which shall be pd or payable in respect of the sd trade and also all losses and dams which shall happen to the sd trade by reason of bad debts or orwise *And also* in case of the death of either of them the sd (P.) and (C.) during the sd term shall and will pay unto the sd (C.) his exs or ads a proportional part of the sd yrly payments so covtd to be made to him as afd from the last of such respive days of payment next preceding his dece up to the day of his dece *And finally* it is hby decld and agrd by and betn the prties hereto That it shall be lful for the sd (P.) at any time to determine these prests upon giving unto the sd (C.) three mths' notice thof in writing and on the expiration of the sd three mths and the paymt of what shall be due unto the sd (C.) evy article clause and covt hinbefe mentd shall cease and be void any thing hin contd to the contrary in anywise notwithstg. *In witness &c.*

No. LXXII.
*Merchant and
 Factor.*

No. LXXII.

*Agreement between a Merchant, or Manufacturer,
 and a Factor.*

Factor agrees to
 take charge of
 goods on sale.

Factor to render
 accounts at
 stated times ;

Factor to make
 remittances.

Articles &c. Bttn &c. (see *ante*, No. XLVI.) *Witness* That for the consons &c. the sd (Factor) for himself &c. doth covt &c. that he the sd (F.) shall and will during the term of yrs from the date of these prests accept and take into his charge and trust all such goods wares and merchandizes as he the sd (P.) shall send and consign to him the sd (F.) and also shall and will use his best endeavours to sell and dispose of the same to the best prft and advantage *And also* that he the sd (F.) shall and will keep a true acct of all such goods as the sd (P.) shall from time to time consign to him or that may come into his hands and of all sales barthers and or. transactions concerning the same and (a) shall evy mths make true paymt and

(a) If the factor be abroad, say " *And shall immly remit home to the sd (P.) all mos bills and or. secties recd on acct of such sales.*"

vy unto the sd (P.) his &c. of all such mos secties and or.
gs as shall be recd by the sd (F.) for the sd wares and mer-
chizes And at the expiration or sooner determination of
sd term shall and will deliver up unto the sd (P.) all such
ls wares and merchandizes as shall remain unsold in the
ddy of the sd (F.) And also that the sd (F.) shall not nor
give credit to any psns or psn for a greater length of time
mths witht the consent in writg of the sd (P.) And
that he the sd (F.) shall not during the sd term deal or
as a factor for any or. person for the buying and selling
y goods wares or merchandizes whatsr (or "any wares or
ls of a like kind," as the case may be) And the sd (P.) in
on of the sd agency doth hby covt promise and agree with
sd (F.) that he the sd (P.) shall and will (a) pay unto the
F.) yrlly and evy yr the sum of £ so long as he shall
tinue the factor of the sd (P.) under the present agrt In
us &c. (see ante, No. XLVI).

No. LXXII.
Merchant and
Factor.

to deliver up
unsold goods;

not to give
credit;

not to carry on
any other trade.

Principal agrees
to give factor a
yearly salary.

No. LXXIII.

*Agreement to form an Association for the Prosecution of
Offenders.*

No. LXXIII.
Prosecution of
Offenders.

Articles &c. (see ante, No. XLVI.) Betn A. B., C. D. and
F. of the one pt and the other psns whose names are here-
to subscribed of the or. pt &c. Whas robberies and felonies
re of late become very daring and frequent within the town-
p of in the county of and the neighbourhood
of and it is deemed absolutely necessary to enter into an
ociation for the prosecuting of offenders Now we whose
mes are hto subscribed do hby each for himself and herself
ymise and agree with and to the others of them That we will
e our utmost and best endeavours to apprehend all and evy
n and psns whomsr who shall be guilty of or commit any

Parties mutual-
ly agree to
assist in bring-
ing offenders to
justice;

(a) Or, if it be so agreed, say, "shall and will allow the sd (F.) his exs or ads
sum of £ for every 100 pounds' worth of goods sold and so in proportion
any less sum than 100l. by way of commission And also the annual sum of
by way of salary for his trouble."

No. LXXIII. Prosecution of Offenders.	<p>robbery burglary larceny felony or or. criminal offence agst psn or property of us or any of us or by means whof we or of us or of our property shall be affected or injured <i>And</i> and will prosecute to conviction all such offenders <i>And</i> that purpe we do hby nominate appt and empower M. W. C. H. atties at law or either of them but nevertheless unde direction and control of the committee hnafttr mentd to take use all lful ways and means to prosecute convict and brin justice all and evy such offender or offenders <i>And</i> we for the better discovering and bringing to justice of such off ers that we will give such reward to any psn or psns who inform and give evidence agst such offender or offender shall be thought proper by the committee to be constitute hnafttr mentd <i>And</i> in case it shall be necessary that we use our best endeavours to procure a free pardon for accomplice or accomplices who shall be concerned in any o offences afd and shall make a full discovery and give evid thof so that one or more of such or. offender or offenders be convicted and brought to justice on such information discovery (a) <i>And</i> for the purps afd we do hby furr agree the present to advance and subscribe the sum of shill to defray the expences of prosecutions and rewards and suc necessity and incidental exps as shall or may be incurred and also from time to time whenever required to advance subscribe such furr sums of money for the purps afd as th committee shall deem expedient in that behalf <i>And</i> tha the costs chas rewards and exps whatsoever which shal incurred and sustained in any manner in or about the pu cution of such offenders and in carrying this agrt into e shall be pd out of the sd subscription-funds which shal lodged in the hands of I. H. and Co. bankers for the purp <i>And</i> it is hby mutually agrd by and betn the pties hto that</p>
to authorize certain attornies to prosecute ;	
to offer rewards for detecting offenders,	
and procure a pardon for ac- complices,	
and to subscribe for defraying the expences ;	
to elect a com- mittee annually.	

(a) If the expences are to be raised by a rate, say, "*And* for the purps hby agree that all costs chas and exps whatsr which shall be incurred at tained in any manner in or about the prosecution of such offenders and ca the present agrt into effect shall be pd and raised by us and evy of us jly equal and proportional pound rate and assessment in proportion to the yrlly of the messes lds tents and heredit by us resply held and occupied with said township according to the value at which the same are rated for the n the poor within the same township."

time parties to be elected annually out of the whole meeting to be convened for that purpose shall be for the time being who shall have the sole management of the association which said committee is hereby empowered to make such rules and orders and for effecting the purposes as they or three of them expedient and necessary *Provided always* that this shall extend only to persons and property residing and in the said township and neighbourhood and five miles elsewhere any thing hereinbefore contained to the contrary notwithstanding (a) *As witness* our hands this

No. LXXIII.
*Prosecution of
Offenders.*

18

POINTS FOR THE SALE AND PURCHASE OF ESTATES.

*must be in Writing.
When void or otherwise.
of Agreements for Sale.
as to the Title.
by Parties.
in Leases.
n.
preparing Conveyance.*

8. *Consequences of the Contract.
Representatives of Vendor must complete Contract.
Liability of Purchaser.
Purchaser intitled to intermediate Profits.
Time of the Essence of the Contract.*
9. *Penal Clause.*

By the Statute of Frauds, an agreement for the sale of any lands, tenements, or hereditaments, or any interest in the same, will not be binding until it is reduced into writing, although a deposit has been paid, *Blagden v. Brad-* 466; but a note or letter will take a case out of the Statute, *v. Complin*, 2 B. C. C. 32. An agreement for the sale of potatoes growing upon the land has been held not to be a contract, because they are mere chattels, and the contract

Agreement must
be in writing.

if necessary, " *Provided further* that if any of us whose names are subscribed shall at any time hereafter leave and depart from the said township, he shall not hold occupy or enjoy any messuages, lands, tenements or hereditaments within the township, then we so departing shall be immediately discharged from this agreement on and for their proportion of expence thus incurred (if any) in carrying on the purposes of the said association."

<u>Sale of an Estate.</u>	does not confer any exclusive right to the land for a time, Hob. Ld. Raym. 182; <i>Parker v. Stanniland</i> , 11 E. 362; <i>Emmers Heelis</i> , 2 Taunt. 38. When there is an agreement for the sale of real and personal property together, it is held to be an entire contract and if void as to the land will be void <i>in toto</i> , <i>Cooke v. Tombs</i> , 2 E. 425; see further 1 Sugd. V. & P. 142, <i>et seq.</i> 10th edit.; also p. ii. tit. FRAUDS (STATUTE OF).
Agreement when void or otherwise.	2. An agreement for a sale ought to be drawn with great care as to contain every important particular. Nothing can be added in parol evidence to supply an omission in an agreement after it has been correctly reduced into writing, provided it was drawn according to the intention of the parties at the time, <i>Omerod v. Hardm</i> Ves. 730.
Construction of agreements for a sale.	Neither in the construction of agreements will the intention of the parties, tending to show their own conception of the meaning, be taken into consideration, <i>Clifton v. Walmesley</i> , 5 T. R. 564; <i>1 den v. May</i> , 7 E. 237; 9 Ves. 325; see further as to how far parol evidence is admissible to vary or annul written agreements, 1 E. 5 V. & P. chap. iii. sect. viii. ix.; Dig. p. ii. tit. FRAUDS (STATUTE OF).
Stipulation as to the title.	3. Notwithstanding the usual clause, "Provided the title be proved by the purchaser's counsel," yet, if it appear to a Court of Equity to be good, a purchaser will be bound to complete the contract, although it may be objected to by his counsel, <i>Lewis v. J. mere</i> , 10 Mod. 505; <i>Camfield v. Gilbert</i> , 4 Esp. 221; unless otherwise expressly stipulated by the parties.
As to necessary parties.	4. As to the words "necessary parties," usually inserted in contracts, they are particularly important when the estate is purchased by trustees or executors, as, without such stipulation, it appears that a purchaser cannot insist on any of the <i>cestui que trusts</i> being purchased, nor upon any other covenants from the trustees or executors, except that they have not incumbered, <i>Wakeman v. Duchess of Rut</i> 3 Ves. 236, 505.
As to subsisting leases.	5. If a person contract for the purchase of an estate with not a subsisting lease, he will be considered as a tenant of the contract, and be bound by his contract, although such lease shall contain covenants contrary to the custom of the country. A purchaser ought therefore either to inspect the lease, or obtain a covenant from the vendor, that it contains such covenants only as are justified by the custom of the country, <i>Taylor v. Stibbert</i> , 2 Ves. jun. 440; 3 E. 5 V. & P. 440, 10th edit.
Consideration.	6. The consideration in an agreement for the sale of an estate must be either certain or reducible to a certainty. A contract for the purchase of an estate at so many years' purchase, or at so much per

of a specified sum, has been deemed a sufficient certainty of
Milnes v. Gery, 14 Ves. 408; *Shannon v. Bradstreet*, 1 Sch.
 f. 78.

*Sale of an
 Estate.*

The expence of preparing a conveyance must, according to the
 established practice of the profession, be borne by the purchaser, if
 there is no express stipulation to the contrary, 2 Ves. jun. 155. And
 it now also has to be decided, that he must prepare and tender
 the conveyance to the vendor, *Baxter v. Lewis*, Forr. 61; 1 Sugd.
 P. 376, 10th edit. But, as this is a doubtful matter, it ought
 to be expressly stipulated in the agreement. Where a term has once
 been assigned to attend the inheritance, and a purchaser wishes it to
 remain assigned, it is apprehended that it ought to be done at his
 expence, but the title must be deduced at the expence of the vendor,
 3rd. V. & P. 10th edit. 9.

*Expence of
 preparing con-
 veyance.*

Where an agreement has been entered into to sell an estate, the
 representatives of the vendor are bound by the contract, although not expressly
 named, *Gill v. Vermuden*, 2 Freem. 199. And now by 11 G. 4 & 1
 c. 60, s. 16, the representatives of any deceased vendor are to be
 bound for the purchaser after a decree for a specific performance;
 likewise persons in whose names purchases are made; so, by s. 17,
 trustees for life &c. of estates devised in settlement may be directed to
 convey after a decree for specific performance; and by 1 W. 4, c. 65,
 committees of lunatics may convey in performance of cove-
 nants under direction of the Lord Chancellor, see Dig. p. ii. tit.
 18 (EQUITY). So a purchaser, being considered in equity to be the
 owner of the estate from the time agreed on for completing the
 contract, is liable to any loss which may happen to the estate between
 the agreement and the execution of the conveyance, *Paine v. Meller*,
 s. 349; 1 Sugd. V. & P. 277, 10th edit. If, therefore, the sub-
 ject of the contract be that which may be destroyed by fire, it is
 usual to stipulate, either that the purchaser should insure, or that
 the vendor should keep on the insurance. By the same rule, a pur-
 chaser will be intitled to any benefit which may accrue to the estate
 at an intermediate time; as if a person agree to give an annuity for
 the life of the vendor, or other contingent consideration for an estate,
 and the vendor die before the conveyance is made, the purchaser will
 be intitled to a specific performance of his contract, unless it be
 expressly stipulated to the contrary, *Mortimer v. Capper*, 1 B. C. C.
 ; *Jackson v. Lever*, 3 ib. 605; 9 Ves. 246. Another conse-
 quence of the general rule in equity, that what is agreed to be done
 is considered to be done, is, that the purchaser who contracts for the
 purchase of an estate will be intitled to the rent, and the vendor to

*Consequences
 of the contract.*

*Representatives
 of deceased
 vendor must
 complete con-
 tract.*

*Liability of
 purchaser.*

*Purchaser in-
 titled to inter-
 mediate profits.*

<i>Sale of an Estate.</i>	interest for his money, until the execution of the conveyance, <i>Seto v. Slade</i> , 7 Ves. 274. But as the rate of interest to be paid by the purchaser is not fully settled, and frequent disputes arise on account of the delays on one side or the other, it seems desirable that these points should be determined by some express stipulation, Sugd. V & P. Append. No. VI. Another consequence of the rule above mentioned is, that an agreement to surrender copyhold lands will operate to bar the widow's free-bench, although the husband die before the surrender is perfected, <i>Hinton v. Hinton</i> , 2 Ves. 631; <i>Brown v. Raindle</i> , 3 Ves. jun. 256; but as to dower, see DOWER. In sale by private agreement it is usual to fix a time for completing the contract. This is of importance, as it is now held (contrary to former decisions) that time is of the essence of the contract, <i>Lery v. Lindo</i> 3 Mer. 84.
Time of the essence of the contract.	
Penal clause.	9. As to the penal clause very frequently inserted in agreement of this kind, see <i>ante</i> , AGREEMENTS, sect. 8; see also further, <i>post</i> PURCHASES.



No. LXXIV.

*Sale of Freehold.**Agreement for the Sale of a Freehold Estate.*

Parties.	<i>Articles &c.</i> (see <i>ante</i> , No. XLVI.) Betn. (<i>Vendor</i>) of &c. for himself his hrs (a) exs and ads of the one pt and (<i>Purchaser</i>) of &c. for himself &c. (b) of the or. pt <i>Witness That</i> the sd (<i>V.</i>) doth hereby agree with the sd (<i>P.</i>) to sell to him the sd (<i>P.</i>) <i>All those</i> messes lds &c. (<i>parcels</i>) with the appts for the sum of £ (c) to be pd at the time and in the manner hereafter expressed And that he the sd (<i>V.</i>) shall and will within _____ weeks from the date hereof at his own expence furnish the solicitor of the sd (<i>P.</i>) with a full and satisfactory abstract of the title of his the sd (<i>V.</i>) to the whole of the sd preses And will also at his own expence deduce a clear title thto And also that he the
Vendor agrees to sell,	
to furnish abstract of title;	
that necessary parties shall join in executing conveyance.	
	(a) As to the word "heirs" see <i>ante</i> , AGREEMENTS, Pref. sect. 2. (b) Or, "by his attorney or agent." (c) Or, if it be so agreed, say, "after the rate of _____ yrs purchase according to the present annual value of _____." Or, "for an annuity or clear year sum of £ _____ payable to the sd (<i>V.</i>) during his life by half-yrly payment on the _____ day of _____ and the _____ day of _____ and to be charged on the sd preses and furr secured by the bond of the sd (<i>P.</i>) with a warrant of attorney for entering up judgment thereon." As to the consideration, see <i>ante</i> , sect. 6.

sd (V.) or his hrs and all or. necessary (a) pties shall and will on or before the day of next ensuing (b) on receiving from the sd (P.) his exs or ads the sum of £ at the request costs and chas of him the sd (P.) his exs &c. exte a proper conveyance for conveying and assuring the inhance and fee-simple of and in the sd messes lds and heredit with the appts unto the sd (P.) his hrs and ass free from incumbs (c). In conson whof the sd (P.) hby agrees with the sd (V.) That provided the counsel of the sd (P.) shall approve of the title of the sd (V.) to the sd preses he the sd (P.) his hrs exs ads or ass on the exon of such conveye as afd shall and will (d) pay the sd sum of £ unto the said (V.) his exs or ads (e) And it is hby furr agrd by and betn the sd (V.) and (P.) that the said conveye shall be prepared by and at the expence of the sd (P.) except a release of incumbrances or an assignment of outstandg terms if not before assigned And that the same shall be settled and approved of on the pts of the sd (V.) and (P.) by their respive counsel And that each of them the sd (V.) and (P.) shall pay the fees of his own counsel And that the rates taxes and outgoing paye for or in respect of the sd preses to the day of shall be discharged by the sd (V.) his exs and ads And also that the sd (P.) his hrs or ass shall have rece and take the rents and profits of the sd

No. LXXIV.
*Sale of
Freeholds.*

Purchaser
agrees to pay
purchase-
money.

Conveyance at
purchaser's ex-
pence.

Vendor to pay
rates &c. to a
given day.

Purchaser to
receive rents
&c. from the
same day.

(a) As to necessary parties, see *ante*, sect. 4.

(b) If the consideration be an annuity, say, "on having the sd annty seed to the sd (V.) in manner as afd."

(c) If there be subaisting leases, and if it be so agreed, say, "except only leases at rack-rent not exceeding years and containing only usual covenants," see *ante*, sect. 3.

(d) If the consideration be an annuity, say, "well and effectually grant the sd annty or clear yrly sum of £ unto the sd (V.) and secure the same upon the preses in manner as afd."

(e) If there be timber to be taken at a valuation, say, "And shall and will also pay for all the timber growing on the sd este such sum of money as the same shall be valued at by two indifferent persons to be chosen the one by the sd (V.) and the other by the sd (P.) or an umpire to be chosen by them In which sd valuation it is agrd that all trees which shall be of the value of or upwards shall be accounted timber And in case it shd be necessary to postpone the valuation until the fall of the leaf that the sd (P.) shall give to the sd (V.) a bond in a sufficient penalty conditioned for the paymt of the sum at which the sd timber shall be valued within one calr mth after such valuation."

No. LXXIV.
*See s. of
Freehold.*

Purchaser to
pay interest
from a given
day.

messes and preses from the day of next ensuing
for his and their own proper use *And* (a) if the sd conveye
shall not be exted by the necessity pties and the sd purchase-
money not pd on or before the sd day of then the
sd (P.) shall from the same day pay interest for the sd pur-
chase-money (b) at the rate of £ per cent. per ann. *And*
furr that any trifling error or omission which may appear to
have been made with respect to the quantity or or. description
of the sd preses [so that the same be not essentially different
in quality from those herein described] shall not vacate the
contract but a reasone abatement shall be made by the sd (V.)
his exs &c. *And furr* that any loss or damage which may
happen to the sd preses by fire or otherwise or any benefit (c)
which may accrue to it between the date of these prsts and the
completion of the purchase shall not in anywise affect or vacate
this contract (d) *In witness &c.*, see *ante*, No. XLVI.



No. LXXIV.
*Another (short
Form).*

No. LXXIV.—2.

Another (short Form).

Memorandum of an agreement made the day of
Betn &c. The sd (V.) in conson of the sum of £ of lflul
money of Gt Brit to be pd to him by the sd (P.) and also of
the covt as hnafter mentd doth agree with the sd (P.) that he

Time the es-
sence of the
contract.

(a) Or, if it be so agreed, say, "*And* if the sd (V.) shall not deliver an abstract
of his title to the sd (P.) or his solicitor befe the expiration of one calr mth from
the date hof or if in the opinion of the counsel of the sd (P.) he the sd (V.)
shall not deduce a good and marketable title to the whole of the sd preses then
in either of these cases this present contract shall at the option of the sd (P.) be
to all intents and purps void and all rease exps incurred by him in investigating
the title shall be borne by the sd (V.) his hrs exs or ada." A similar provision
may also be inserted in case the purchase-money be not paid on the day
appointed. As to the consequences of the contract, see *ante*, sect. 8.

(b) As to the payment of interest, see *ante*, sect. 8.

(c) As to the consequences of the contract in this respect, see *ante*, sect. 8.

(d) If it be necessary, say, "*And furr* that if any of the title-deeds or writings
relative to the sd preses shall be found to concern other property of the sd (V.)
they shall be retained by him on his delivering at his own expence true and
attested copies duly stamped and on his entering into the usual covt to be pre-
pared at his own expence for producing the originals."

the sd (V.) shall and will at his own cost and chas make out a good title and at the costs and chas of the said (P.) convey and assure to him and his hrs in such manner as counsel shall advise a good este in fee-simple in *All the* allotment or allotments to be allowed and set out to him upon the commons or waste grds of N. in the co. of by the commrs empowered by an Act of Parliament lately passed for the inclosure thof for or in respect of all his the sd (V.'s) este in the commons afd and the sd (P.) doth hby agree with the sd (V.) That he the d (P.) shall and will at his own expence prepare such conveys and assures as afd and also when and as soon as the sd commrs shall make and exte their award pay to the sd (V.) the sum of £ as and for the purchase-money And also shall and will pay and discharge all sums of money which shall be occasioned by the obtaining the sd Act of Parl And also all the chas of dividing allotting and setting out the sd allotment so contracted to be sold as afd and of the award to be made by the sd commrs touching the same which the sd (V.) would have been or shall be liable to pay in respect of the sd allotment As witness our hands.

No. LXXIV.
*Sale of
Freeholds.*

SALE OF COPYHOLD ESTATES.

- | | |
|--|--|
| 1. Agreement to sell defeats Free-bench. | 3. Steward authorized to demand Fines. |
| 2. Purchaser to pay Expence of Admittance. | 4. To prepare Surrender. |

SECT. 1. A widow will be defeated in equity of her free-bench of lands, of which her husband died seised, by his agreement for the sale, although he die before the surrender, *Hinton v. Hinton*, 2 Ves. 631. As to the present state of the law of dower, see *post*, DOWER.

Agreement to
sell defeats free-
bench.

2. In the absence of any stipulation to the contrary, the expence of the surrender and admittance, including the fine to the lord, which is not payable until admittance, *Rex v. Ld. of the Manor of Hendon*, 2 T. R. 484, must be borne by the purchaser, *Drury v. Mann*, 1 Atk. 96, although the vendor agrees to surrender at his own expence, *Graham v. Sime*, 1 E. 632. But if the vendor have not been previously admitted, he must bear the expence of his own admittance, in

Purchaser to
pay expence of
admittance.

- Sale of Copyholds.* order to enable him to make a surrender to the purchaser, 1 Atk. 96, n.
- Steward authorized to demand fines. 3. The 48 G. 3, c. 149, authorizes stewards, previously to the acceptance of any surrender, or the granting or making of any admittance, voluntary grant, or licence to demise in court, to demand the payment of all fines for the same, and for the copy of court-roll.
- To prepare surrender. 4. Where it is the custom of the manor for the steward to prepare the surrender, he may insist upon so doing, *Rex v. Rigge*, 2 B. & A. 550.



No. LXXV.

No. LXXV.

- Sale of Copyholds.* *Agreement for the Sale of a Copyhold Estate of Inheritance.*
- Vendor agrees to sell and purchaser to buy. *Articles &c. see ante, No. XLVI. Betn &c. Witness That the sd (vndor) (a) doth agree to sell and the sd (purchaser) to purchase the inhance in fee-simple according to the custom of the manor of M. All those customary or copyhold pces or prcls of ld situate in the sd manor &c. and containing by estimation acres more or less at or for the price or sum of £ And the sd (V.) doth promise and agree to deliver unto the sd (P.) within one mth from the date hereof at his own expence a full and satisfactory abstract of the title of him the sd (V.) thto And also that he the sd (V.) and all or. necessary pties shall and will on or before the day of next ensuing duly surrender the sd preses according to the custom of the manor to the use of the sd (P.) his hrs &c. or as he or they shall direct to be holden at the will of the lord of the manor free from all incumbs whatsr except the quit-rents and the customary dues and services And that the sd (V.) shall at the time of such surrender enter into the usual covts for the title And the sd (P.) doth hby promise and agree That on such surr being made and such covts being exted as afd he the sd (P.) shall and will pay to the sd (V.) the sd sum of £ of &c. And shall pay the (b) exps of the sd surrdr (c) and all*
- Vendor agrees to furnish abstract, and to surrender premises.
- and enter into covenants for title.
- Purchaser agrees to pay purchase-money, and expences &c.

(a) Consequences of the contract, see *ante*, sect. 8, No.

(b) As to expences, see *ante*, sect. 2.

(c) Preparing surrenders, see *ante*, sect. 4.

and fines upon the surrender and admission of the sd (P.) to
reses and that the sd deed of covenants shall be prepared by
the expence of the sd (P.) (*As to other covenants, see*
XIV.) *In witness &c.*

No. LXXV.
*Sale of
Copyholds.*

No. LXXVI.

*Agreement for the Sale of a Freehold and Copyhold Estate
to an Agent.*

No. LXXVI.
*Purchase by
Agent.*

As to when an agent must be authorized by a writing and
parol, see *ante*, Pref. *Principal and Agent*.

les &c. see ante, No. XLVI. *Witness* That the sd
s) do hereby agree with the sd (*agent for purchaser*) as
s afd to sell to him and the sd (A.) as such agent doth
ee to purchase of the sd (V.) *All that* freehd and copyhd
r tenmt and farm with the barn stables yards gardens
s lds meadows pastures feedings commonage timber
trees rights members and appts thunto belonging which
re situate at &c. and contain by survey 24 acres [and
d lds are to be taken at that measurement be the same
less] and are now in the occupn of &c. or their under-
at or for the price of £ whof £ have been pd by
e the exon of these prests to the sd (V.) as they do hereby
cknge *And* the sd (V.) do hereby furr agree with the sd
such agent that they the sd (V.) shall at their exp deduce
title to the sd heredit and preses and shall on or before
day of next on receiving from the said
user) or (A.) or either of them the sum of £
of the sd purchase-money at the costs of the sd (P.) or
e at afd a proper conveye surrender and assure
ettled by their respive counsel for conveyg and assurg
simple and inheritance of the same pres unto the sd
hrs or ass or unto such psn or psns as he or they shall
e from all incumbs except the land tax of and

(u) Payment of fines, see *ante*, sect. 3.

No. LXXVI.
Purchase (by
Agent).

a quit rent of payable to the manor of at
And the said (A.) as such agent as afd hby agrees with the sd
(V.) that he shall &c. (*pay purchase-money*) And it is hby agrd
by and betn the pties hto that all taxes rates and outgoings
paye for the sd preses on the sd day of shall
be pd by the sd (V.) And that the said (P.) shall be put in
quiet posson of the preses at that time and be intitl'd to the
rents and prfts throf thenceforth And also that the sd (P.)
shall be intitl'd to take the growing crops of corn hay and
clover at a valuation to be made throf by two indifferent psns
one to be chosen by the sd (V.) and the or. by the sd (P.) or
in case they shall disagree then by a third psn to be chosen by
such two psns such valuation to be made and concluded betn the
 day of and the day of next and
imimy after the completion throf posson of the sd crops shall
be delivered to the sd (P.) upon the paying to the sd (V.) a
deposit of £ per cent. in pt of the amount of such
valuation [and giving security for payment of the remainder
thof on the said day of next] but in case the sd
(P.) shall decline to take the sd crops then the sd (V.) shall
be at liberty either to harvest or sell the same by public auction
or private contract And it is furr agrd that the sd (P.) shall
pay (*for certain fixtures enumerated*) also for the muck mix-
tures or compost and the labour also for all such or. things as
are customary betn an outgoing and incoming tenant as the
same shall be agrd upon and valued by the said two indifferent
psns or third psn as afd And that such valuation shall be
made three weeks befe Michas and the amount thof pd to the
sd (V.) on the sd day of

In witness, (see ante, No. XL VI)

Recd the day and yr first above written of and from the sd
(P.) by the hands of the sd (A.) as such agent afd the sum of
£ in pt of the conson money to be pd to us.

Witness G. B.

(*Vendors.*)

No. LXXVI.—2.

No. LXXVI. 2.
By Guardians.

*Agreement between two Guardians respecting the Purchase
of an Estate by them for their Infant Ward.*

*Articles of &c. see ante, No. XLVI. Betw A. B. of &c. of
the pt and B. C. of &c. of the or. pt. Whas the sd A. B.
& B. C. are testamentary guardians of E. D. an infant under
the age of 21 yrs And whas the said E. D. is under the will of
his father tenant in tail of the manor of G. in &c. And whas
lands and hereditaments at in pt of the estates of the
deceased of &c. some time since were offered to sale and the
same have been purchsd by and convd to the sd A. B. and B. C.
for and ass at or for the price or sum of £ And whas
lands &c. lie contiguous to or intermixed with the estates of
the sd E. D. is tenant in tail under the will of his sd
father and are in all respects a desirable purchase for the sd
E. D. and the sd A. B. and B. C. agrd to purchase the same
being possessed of certain sums of money belonging to the
sd E. D. the inft they the said A. B. and B. C. advanced the
sum of £ pt of the sd mos in the purchase of the sd estate
these prests witness and it is hereby covtd agrd and deld betw
the sd A. B. and B. C. in manner following that is to say
the sum of £ advanced by them in purchase of the
same was the proper money of the sd E. D. the inft
of them the sd A. B. and B. C. advanced out of his psl
and that when and as soon as the sd E. D. shall attain the
age of 21 yrs he the sd E. D. shall be offered the sd purchase
upon his agreeing to ratify and confirm the sd purchase
all accts and transactions relating thto and that if he shall
refuse and agree to the sd purchase on these terms Then and
in that case the sd estate shall be immly convd to him the sd
E. D. his hrs or ass or as he or they shall direct or appt but
if the sd E. D. shall refuse to accept the sd purchase upon
the terms aforesaid Then and in that case they the sd A. B.
& B. C. their hrs and ass shall retain the same for their own
use and bent and shall be considered as having originally
used the same with their own respive mos advanced by
them resply in equal shares and proportions and under an agrt*

No. LXXVI. 2. By Guardians. that there shall be no survivorship betw them and shall hold the same as if originally seised thof as tents in common in fee simple and not as jt-tents And furr that evy bent or advantage which may be derived or any loss or detriment which may be sustained by reason of their having made the sd purchase shall be borne by them the sd A. B. and B. C. and their respive hrs exs and ads in equal shares and proportions *In witness &c.* (see ante, No. XLVI.)

Agreement whereby Part of Purchase Money is to remain in Purchased Lands until Minors attain 21—see post, PURCHASES.

No. LXXVII.

Agreement for the Sale of Leasehold Premises, with a Covenant to take the Furniture.

- | | |
|---|--|
| 1. Executors bound by Agreement. | 4. Taking a New Lease. |
| 2. Production of Lessor's Title. | 5. Not Assigning without Lessor's Consent. |
| 3. Indemnity against Rents and Covenants. | |

Executors
bound by
agreement.

SECT. 1. An agreement for the sale of a leasehold interest will be binding on the personal representatives, although not named, *Smith v. Watson*, Bunb. 55.

Production of
lessor's title.

2. Provision ought to be made in the contract to assign a lease as to the production of the lessor's title. A court of equity will not compel specific performance where the vendor is plaintiff, unless he can show a good title in the lessor to the estate out of which it is granted; and consequently, a vendor who is either unwilling or unable to show a title, must expressly stipulate to that effect in the contract, *White v. Foljambe*, 11 Ves. 337; *Deverell v. Ld. Bolton*, 18 ib. 505; *Fildes v. Hooker*, 2 Mer. 424.

Indemnity
against rents
and covenants.

3. A purchaser of a leasehold is bound, it seems, to indemnify the lessee against the rents and covenants in a lease, although the vendor may not, at the time of the contract, have made any stipulation to that effect, *Pember v. Mathers*, 1 B. C. C. 52; *Stains v. Morris*, 1 Vew. & Bea. 13.

Taking a new
lease.

4. Under a contract for the residue of a term, a purchaser will not be compellable to take a new lease, *Mason v. Corder*, 7 Taunt. 9.

5. Where there is a clause in a lease against assigning without the lessor's consent, the vendor is bound to procure such consent, *Lloyd v. Crisp*, 5 Taunt. 249; *Mason v. Corder*, 7 Taunt. 9; *S. C.* 2 Marsh. 232.

No. LXXVII.
*Sale of
Leaseholds.*

Not assigning
without consent.

Articles &c. see *ante*, No. XLVI. Betn &c. as follow The sd (*Vendor*) in conson of the sum of £ to be pd as hnaft is mentd doth hby for himself his &c. (a) covenant &c. with &c. the sd (*Purchaser*) his &c. that he the sd (*V.*) shall and will on or before the day of convey unto the sd (*P.*) at his own costs and chs *All that* leasehd messe &c. (*parcels*) for the residue of the term now to come and unexpired granted to the sd (*V.*) by virtue of an indre of lease bearg date on or about the day of subject to such payments conditions and covts as in the sd lease are reserved to be pd kept and performed by the lessee (b) in conson whof the sd (*P.*) doth hby covt and agree with the sd (*V.*) that he the sd (*P.*) shall and will well and truly pay unto the sd (*V.*) his exs or ads the sum of £ of lful money of Gt Brit on or before the day of and on the exon of the conveye by which the sd preses are to be granted and conveyed as afd in full for the purchase of the sd preses And it is hby furr agrd by the pties hto that such househd furniture goods and effects as the sd (*V.*) shall think proper to leave in and about the sd preses at the time that he shall quit posson thof shall immly aftwds be valued and appraised by two indifferent psns which the sd pties hby agree to choose for that purpe and that the same shall be taken by the sd (*P.*) according to such appsmnt And (c) the sd (*P.*) doth hby agree that he the sd (*P.*) shall and will within mnths after the sd appraisalment shall be delivered to him pay

Vendor agrees
to assign pre-
mises for the
residue of the
term.

Purchaser
agrees to pay
purchase-
money.

Furniture to be
taken at a valu-
ation.

Purchaser
agrees to pay
for the furni-
ture when va-
lued.

(a) As to the naming of executors, &c. see *ante*, sect. 1.

(b) As to the necessity of any stipulation in the contract for indemnifying the vendor against the rents and covenants in the lease, see *ante*, sect. 3. Also as to the covenant respecting the title of the lessor, see *ante*, sect. 2.

(c) If the agreement be to sell the stock of a farm, say "And the sd (*V.*) doth agree to bargain and sell to the sd (*P.*) All the corn grain grass and roots now growing on the sd farm or being in or upon any pt of the sd preses And also all the horses cows pigs carts waggons ploughs and all or. live and dead stock belonging to the sd (*V.*) and now on the sd preses the whole to be taken at an appraisalment or valuation to be made by two indifferent psns whom the sd pties hby agree to choose &c. for that purpe and that the same shall be taken &c." (as above.)

No. LXXVII.
*Sale of
Leaseholds.*

such sum of money as the same househd furniture (or "stock &c.") shall be appraised or valued at as afd In witness &c. see ante, No. XLVI.

No. LXXVIII.

*Sale of an
Advowson.*

No. LXXVIII.

*Agreement for the Sale of an Advowson, and also for a
Lease of the Tithes.*

Obs. 1. The grant of an advowson during a vacancy is void, quoad the next presentation, *Grey v. Hesketh*, Ambl. 258; but not as to the advowson itself, *Barrett v. Glubb*, 2 Bl. 1052. So the sale of the next presentation is void by the Statute of Simony, and a contract for the sale of the next presentation, the parties at the same time knowing the incumbent to be at the point of death, is simoniacal, *For v. Bishop of Chester*, 2 B. & C. 635. So by the 12 Ann. s. 2, c. 12, if any clerk purchase for himself the next presentation, and is presented thereon, the next presentation is void, (see further, Dig. p. ii. tit. ADVOWSON; p. iii. tit. PRESENTATION.)

2. If a church become vacant by the promotion of the incumbent to a bishopric, the queen, by her prerogative, has the next presentation; provision is therefore frequently made for this event in the contract for the purchase of an advowson.

Vendor agrees
to make out a
title, and to
convey advow-
son.

Articles &c. see No. XLVI. *Witness* That in conson of the sum of £ to be paid to &c. (*Vendor*) by &c. (*Purchaser*) at the time hnaft mentd he the sd (*V.*) for himself &c. (*agreement to make out a title*, see No. LXXIV.) and at the request &c. on or before &c. well &c. convey &c. unto &c. (*P.* his &c. *All that* advowson donation right of patronage an presentation of in and to the rectory of afd with the right members and apts and the inhance thof free from all incumt whtvr charged upon or in anywise affecting the sd advowsc or the incumbent thof save and except the land-tax amountir to £ per ann. a tenth amounting to £ per ann. synoda and procurations amounting to £ And whas the prese rector or incumbent of the sd rectory of hath completed tl yr of his age Now these presents furr witness and it hly deeld and agrd by and betn the pties hto That in case of tl death resignation cession deprivation or relinquishment of tl and (*P.*) on or before the day of next ensuing he t

d (V.) his hrs &c. shall and will duly present such parson to the sd rectory as the sd (P.) shall nominate And that if the presentation should devolve on the crown in consequence of the present incumbent being promoted to a bishoprick before the day of then and in such case so much of the purchase-money as shall be equal to the value of the next presentation to be ascertained by two indifferent psns to be apptd in the usual manner shall be returned by the sd (V.) to the sd (P.) [or "this contract shall not be affected thereby nor shall the sd (P.) be intituled to any deduction out of the sd purchase-money," as the case may be] And the sd (V.) doth hereby furr agree That upon payment of the sd sum of £ as hnafter mentd he the sd (V.) shall and will at the request &c. of the sd (P.) grant unto the sd (P.) a good and valid lease of all the tithes and compositions for tithes belonging or paye to the sd rectory or the rector or patron in respect of the same and the tithe barn and glebe lds belonging to the sd rectory for and during the term of years to be completed from the day of last if the sd (V.) should so long live or remain incumbent of the sd rectory at or under the yrly rent of £ aye on the day of in which lease so to be granted s afd shall be contained a covt on the part of the sd (V.) immly n the exon of the sd lease to put the barn in good and tenantable repair and during the continuance of the sd lease to keep the same barn and also the parsonage-house belonging to the same with the appts and also the chancel of the church of afd in good and tenantable repair except such repairs as may be required in consequence of any voluntary dilapidations by the sd (P.) his exrs &c. And also shall and will during the sd lease at his own expence provide a curate to perform the duties of the sd church of afd And it is furr agreed That in such lease shall be provided that the ld-tax and all synodals procurations and tenths and all or. taxes rates assessments and payments in respect of the sd tithe barn and glebe lds shall be pd by the sd (V.) and that it shall be lful for the sd (P.) to deduct out of the annual rent all such sums of money as he shall pay on account the sd ld-tax tenths synodals procurations and all or. rates and assessments whatsr And the sd (P.) for himself his hrs &c. doth hereby agree to pay the sd sum of £ upon the

No. LXXVIII.
Sale of an Advowson.

In case the church be vacant, to present nominees of the purchaser.

To grant a lease of the tithes.

Covenant that vendor shall repair barn and parsonage, &c.

and provide a curate;

and pay all taxes, &c.

Purchaser agrees to pay purchase-

No. LXXVIII. *Sale of an Adowson.* exon of the sd conveye and to accept the sd lease And that the conveye and the lease to be granted to the sd (P.) and also the counterpart thof shall be prepared by him at his own costs and chas but that in all or. respects each of the sd pties shall pay the fees of his own counsel and the chas of his own solicitor *In witness &c., see ante, No. XLVI.*

No. LXXIX.
*Sale of a Board-
ing-School.*

No. LXXIX.

Agreement to assign a Boarding-School, Lease of the Premises, and Furniture.

Articles of &c., see ante, No. XLVI. Betn (Vendors) of &c. of the one pt and (Purchaser) of the or. pt. *Witness* That for and in conson of the sum of £ to be pd on the day of next ensuing they the sd (V.) do hby agree to relinquish and assign *All that* the boarding-school conducted by them at and *All that* the messe or tent garden and preses where the same has been heretofore carried on and to exte on recpt thof a good and valid assnment in the law of the sd boarding-school and preses and also the indre of lease by which the sd (V.) hold the same for the residue of the term then to come and unexpired but subject to the rent and covts thin reserved and contd *togetr* also with the two policies of insurance whby the sd preses and the household furniture goods and effects thin contd are insured from fire *And also* shall and will pay all rent and taxes due for the sd messe up to the sd day of now ensuing *And* the sd (P.) doth hby covt promise and agree with and to the sd (V.) that she the sd (P.) shall and will on the sd day of well and truly pay to them the sd (V.) the full sum of £ of lful &c. as a premium or conson for the sd boarding-school messe &c. and shall and will accept such assignmt thof respby as is hereinbefore mentd And it is hby mutually agrd by the pties hereto that a valuation shall forth with be made of the household furniture goods chattels line fixtures and things which are in and upon the sd preses by tw pns one to be chosen by the sd (V.) and the or. by the sd (P.) And the sd (P.) doth hby agree to pay unto the sd (V.) cal mths after the sd day of next ensuing the fu

Vendors agree to assign goodwill of the school and the messuage;

also policies of insurance.

Purchaser agrees to pay consideration.

Valuation.

Purchaser agrees to pay the amount.

amount at which the sd furniture and effects shall have been valued *In witness &c. see ante, No. XLVI.*

No. LXXIX.
*Sale of a Board-
ing School.*

Agreements following and referring to Conditions of Sale—see post, CONDITIONS OF SALE.

Agreements as to Shipping—see post, SHIPPING.

No. LXXX.

No. LXXX.
As to Title.

Agreement for letting Purchaser into Possession before Acceptance of Title.

Obs. As a rule, a purchaser by entering into possession before a conveyance is executed, is held to waive all objections to the title, as where he takes possession at the instance of the vendor, and on his assurance that the title is good, *Vancouver v. Bliss*, 11 Ves. 458. So, if possession is authorized by the contract to be taken before the title is made, that will not be deemed a waiver, *Stevens v. Guppy*, 3 Russ. 171. And if a purchaser wishes to have immediate possession, he may protect himself by a special clause, as in the following precedent.

Effect of taking
possession.

Memorandum of an agt &c. (see ante, No. LXXIV—2.) *Whas* by a contract entered into the day of the sd (*Vendor*) agrd to sell and the sd (*Purchaser*) agrd to purchase certain freehold estates comprised in the sched. thereunder written, *Now these Presents witness*, and it is hby decl'd and agrd by and betn the sd pties that the sd (*purchaser*) may be let into and take immediate posson of the sd estates so contracted to be sold to him as afd for his own bent in as full and ample manner as if a conveyance of the same had been executed: Provided always that such (a) taking posson shall not be deemed to be an acceptance of the title or as an abandonment on the pt of the sd (*purchaser*) of his right to have all valid objections

(a) As to the necessity of this provision, see *Observation, supra*.

No. LXXX.
As to Title.

thereto fully removed and all defective evidence supplied at the expence of the sd (*vendor*) And the sd (*vendor*) doth hby agree that he will forthwith proceed with the sd contract, and remove all valid objections to be made to the sd title, and supply all evidence which may be defective therein.

As witness our hands the day and year first above written.

A. B.

C. D.



No. LXXXI.
Waiver of
Agreement.

No. LXXXI.

Agreement that certain Acts shall not be deemed a Waiver of an Agreement.

Recital of
agreement.

Articles &c. see *ante*, No. XLVI. Betn H. B. of &c. of the one pt and D. B. of &c. of the or. pt *Whas* on the day of now last past the sd H. B. and D. B. did enter into an agrt of that date under their hands for the divon of the lds comprised in a settlement of and touching sevl matters relating thto And *whas* pt of the lds comprised in the sd settlmt and mentd to be subject to the sd agrt have been sold by the sd H. B. to T. C. at or for the price or sum of £ and the sum of £ is to be allowed by the sd H. B. to the sd T. C. out of his sd purchase-money on acct of some objections taken to the title to the sd lds And *whas* the sd D. B. has been reqd to join in a covnt of the lds so agrd to be sold to the sd T. C. as afd and has consented so to do upon having this agrt entered into betn him and the sd H. B. Now *these Presents witness* and it is hby agrd and decld that the sd D. B. shall not by exting the sd intended covnt be debarred or precluded from any bent under the sd intended agrt of the sd day of now last past or be held deemed construed or taken to have waived renounced or departed from the terms or stipulations of the same agrt And that on the contry thof the sd agrt shall remain in full force and virtue and be binding on the sd H. B. and D. B. notwg the conve to be extd by the sd D. B. as afd And it is hby also agrd and decld that unde the terms of the sd agrt the sd H. B. shall notwg the af

abatement be consd to have recd the full sum of £ from
the produce of the sd este as and for the purchase of the lds
sold and to be convd to T. C. afd and that on the divn of the
residue of the sd lds comprised in the sd settlement the sd H. B.
shall be deemed and taken to have recd lds to that amount in
pt of his share of the same *And* that in the allotment to be
made to and for the sd D. B. respect shall be had thrt to and
that in the first place and befe any divn betn the sd pties lds of
equal value shall be allowed to him in lieu of the lds sold to the
sd T. C. and valued at the sum of £ as afd

No. LXXXI.
*Waiver of
Agreement.*

In witness &c. see ante, No. XLVI.

No. LXXXII.

*Agreement for settling Litigations and Questions arising under
a Will.*

No. LXXXII.
*Settling Liti-
gations under
Will.*

Articles &c. see ante, No. XLVI. Betn M. W. of &c. of the
one pt and E. S. of &c. of the or. pt. *Whas &c. (recite the will
&c.) Now these Prests witness* and the sd M. W. doth hby
for herself her hrs exs and ads covt prom and agree to and with
the sd E. S. his hrs and ass in manner following that is to say
That she the sd M. W. her hrs or ass shall or will with all
convent speed rele and convey the sd messes &c. unto and to
the use of the sd E. S. his hrs and ass for ever free from all
incumbs whatsor made done or committed by the sd M. W. or
any psn or psns claiming or to claim by through or under her
And also shall and will do all rease acts deeds whatsr for the
putting the sd E. S. into the quiet and peaceable enjoymt thof
And also shall and will deliver up to the sd E. S. his hrs and
ass all title deeds writings and muniments whatsr that relate to
or concern the sd preses *And these Prests furr witness* and
the sd E. S. doth hby for himself his hrs exs and ads covt
prome &c. to and with the sd M. W. that he the sd E. S. his
exs and ads shall and will with all convenient speed assign and
transfer all the psl este of the sd J. W. decd and all the int and
este of the sd E. S. thin unto the sd M. W. her exs ads and ass
And shall and will if necssy permit and suffer the sd M. W.

No. LXXXII.
*Settling Lega-
 tions under
 Will.*

her exs ads or ass to use his and their name or names in
 action or actions suit or suits that shall or may be sued o
 menced or prosecd agst the sd S. B. D. the exr as afid or
 or. psn or psns whomsr to recover such psl este or any pt th
 And also shall and will do all rease acts deeds and thi
 whatsr for the putting the sd M. W. in the actual posson
 enjoyment of the sd psl este and evy pt thof And it is
 also agrd betn the sd pries hto that at the time of exeting
 forementd deeds and convys they the sd E. S. and M. W. s
 and will seal and deliver each one to the or. mutual gen
 reles of all claims and demands whatsr from the beginnin
 the world to the day of the date of such rele (*Here ad
 necessary the penalty clause, see ante, No. XLVI.*)

ANNUITY.

- | | |
|--|---------------------------------------|
| 1. <i>Definition of an Annuity.</i> | 6. <i>When a Wife is bound by a C</i> |
| <i>Distinction between Annuity and</i> | <i>by her Husband.</i> |
| <i>Rent-charge.</i> | 7. <i>Power of Distress.</i> |
| 2. <i>How granted.</i> | 8. <i>Power of Entry.</i> |
| <i>By the words "Perceive" and "Re-</i> | 9. <i>Warrant of Attorney, Bond,</i> |
| <i>ceive."</i> | <i>Covenant to pay.</i> |
| 3. <i>To whom granted.</i> | 10. <i>Redemption of Annuity.</i> |
| 4. <i>Apportionment of Annuity and</i> | 11. <i>Effect of making the Recei</i> |
| <i>Rent-charge.</i> | <i>Trustees valid discharges.</i> |
| 5. <i>When an Annuity or Rent-charge</i> | 12. <i>Stamp.</i> |
| <i>goes to the Heir.</i> | |

Definition.

SECT. 1. An annuity is a yearly payment of a certain sum
 money granted to another for life or years, or in fee, Co. Litt. 14
 If a man seised of land grant a yearly rent, issuable out of the l
 to another in fee-tail or for term of life &c., with a clause of dist
 this is a rent-charge. The principal difference between an ann
 and a rent-charge is the remedy which the law gives for the reco
 of the arrears. If an annuity issue out of land, as it now most
 monly does, the grantee has his election to bring a writ of ann
 and, charging it upon the person, to make it personal, or to dis
 upon the land so as to make it real, Co. Litt. 144 a. But he ca
 have them both together, for if he recover by a writ of annuity,
 the land is discharged of the distress; but if he distrain for

Distinction be- tween annuity and rent- charge.

arrears, and avow the taking of the distress in a court of record, then is the land charged, and the person of the grantor discharged, Litt. s. 219. As few grants of annuities are without a covenant for payment expressed or implied, an action of covenant may, and now mostly is, brought for the recovery of the arrears when a distress cannot be made. When the grantor of an annuity wishes his person to be discharged, and his land charged, a clause to that effect may be inserted in the deed, Litt. s. 220.

Annuity.

2. To make a good grant of an annuity, no particular technical mode of expression is necessary. If, therefore, a person intending to grant a rent-charge, do it in such a manner that it shall be void as a rent, it will be good as an annuity, for the words "to perceive" or "receive," is a sufficient charge on the person of the grantor, 1 Roll. Abr. 227; 2 Vin. Abr. 507 [E].

How granted.

By the words "perceive" and "receive."

3. If a rent-charge be granted to a man and his heirs, he shall not have a writ of annuity against the heir of the grantor, although he has assets, unless the grant be for him and his heirs, Plowd. 457; Co. Litt. 144 b. But in the case of a corporation, which has a perpetual continuance, the successors will be bound, although not named, Harg. Co. Litt. 144, n. 2.

To whom granted.

4. By the old law, if a man had a rent-charge to him and his heirs, issuing out of certain lands, and he purchased any parcel of those lands to him and his heirs, all the rent-charge became extinct, because it could not be apportioned, Litt. s. 222. So likewise an annuity, if it were not made chargeable on the person, before the purchase, Dyer, 140; Gilb. Rents, 152. So a rent-charge, not being apportionable, if it were made payable half-yearly or quarterly, and the annuitant died in the interval between the days of payment, nothing was due for the time he lived, unless by express stipulation, *Pearly v. Smith*, 3 Atk. 260. Whether an annuity chargeable on the person only, and not on the lands, were subject to the same rule, appears to have been doubtful, *Edwards v. Countess of Warwick*, 2 P. Wms. 176. The law of apportionment has since been altered by the 4 & 5 Will. 4, c. 22, [see APPORTIONMENT]; but as it does not appear to have removed all doubts, it will be safer to insert the usual stipulation for the payment of the annuity for the intervening time that has elapsed between the last payment and the decease of the annuitant, see further Dig. p. ii. tit. APPORTIONMENT.

Apportionment of annuity and rent-charge.

5. By the common law, if a rent be granted to a man and his heirs generally, and he die without devising the rent, and without an heir, the rent does not escheat, but sinks into the land, Butler's n. Co. Lit. 298, n. (2.) Some have supposed that the common law is so far

When an annuity or rent-charge goes to the heir.

Annuity.

altered by the Statute of Frauds, that an estate *pur autre vie* in a rent continues for the executors or administrators of the owner of the rent when it is not limited to his heirs; but the better opinion appears to be, that as the words of the statute, which give estates *pur autre vie* to executors or administrators, only extend to those cases in which there can be no occupant at common law, which in rents cannot be; therefore, if such an estate be limited to a man and his heirs, and he die without devising the rent, and without heirs, it seems that his executors or administrators would not be intitled to the rent, but it would sink into the land, *Savory v. Dyer*, Ambler 139; *Smartle v. Penhallow*, 2 Ld. Raym. 1000. When therefore it is the grantor's intention that an annuity, or rent-charge, for the life of the grantor or the lives of nominees, should form part of his personal estate, it should be limited to him, his executors, administrators and assigns, for a term of years, if the grantor, nominee or nominees, or the survivor of them, should so long live. Such an express limitation, however, does not appear to be necessary in the grant of a personal annuity *pur autre vie*, because it is not a freehold, but only a chattel, *Savory v. Dyer*, Ambler 139; 1 Dick. 162; nor in a grant of an annuity or rent-charge out of a term of years, for this is good for so many years as the term continues, and it is not determined by the death of the grantee, Cro. Eliz. 183; 7 Co. 25 a; 1 Roll.; Abr. 831, pl. 3.

When a wife is bound by grant by her husband.

6. If a man be possessed of land for a term of years in the right of his wife, and grant a rent-charge and die, the wife shall avoid the charge, because she does not claim under her husband. But the husband's alienation of the term itself, or any part of it, binds the wife surviving, Hargr. Co Lit. 184 a, n. 1; Butl. Co. Lit. 331 a, n. 1.

Power of distress.

7. By the 32 H. 8, c. 34, a power of distress is given to grantees and assignees of reversions, their heirs, executors, successors, and assigns; and by the 32 H. 8, c. 37, the same power is given to the executors and administrators of tenants in fee-simple, fee-tail, and for life: this power is extended by 4 G. 2, c. 28, to arrears of rents seek, rents of assize, and chief rents or quit rents. Nevertheless in respect to annuities, an express power of distress is absolutely necessary, to enable the grantee to distrain; for it appears, that where an annual sum is granted upon an incorporeal hereditament, the sum so reserved, although nominally a rent, is only a personal annuity, Co. Lit. 47 a; *Dean and Chapter of Windsor v. Gower*, 2 Saund. 302. So likewise, in creating a rent for life or years to be issuing out of a chattel interest, this clause is equally necessary, because it appears to be a rule of common law, that notwithstanding any statute, a rent

cannot issue out of a mere chattel interest, 7 Co. 23, 24; see further Dig. p. ii. tit. DISTRESS; p. iii. tit. LANDLORD AND TENANT.

Annuity.

8. A power of entry, as well as a power of distress, is usually given to the grantee of an annuity, or rent-charge, or to his representatives, in default of payment for a certain number of days. If this be limited by way of use, it takes effect from the Statute of Uses; but if in a grant of rent, to be issuing out of certain lands, a proviso, condition, or covenant be inserted, that if the rent be in arrear, the grantee may enter; in that case he or his assignee may enter by virtue of such proviso, Butl. Co. Litt. 203 a, n. (1), unless it be otherwise expressly stipulated. (As to the clauses of distress and entry in the case of copyholds, see GRANT OF AN ANNUITY SECURED ON COPYHOLDS.)

Power of entry.

9. In order to make the person of the grantor, as well as his estate liable, it is usual to secure the payment of the annuity or rent-charge either by a warrant of attorney to confess judgment, or by a bond, or by a covenant to pay, very frequently by a bond or covenant, as well as a warrant of attorney; but where there is a covenant to pay, a bond does not add to the security, and is therefore a superfluous expence. When a warrant of attorney is taken, judgment ought to be entered up immediately, *Wild v. Sands*, 2 Stra. 7, 8; *Comie v. Al-laway*, 8 T. R. 257. But in order to obviate the consequences of any omission so to do, a provision is mostly inserted, dispensing with the necessity to revive judgment.

Warrant of attorney, bond, and covenant to pay.

10. An annuity may be redeemable, but it is not necessarily so; and it is not redeemable, unless there be a special provision to that effect in the deed granting it, *Coverley v. Burrell*, 5 B. & A. 257; which ought in no case to be omitted, where it is intended by the parties that it should be redeemed.

Redemption of annuity.

11. In the grant of an annuity as in other cases, where a trust is raised by deed or will for sale of an estate, a clause that the receipts of trustees shall be sufficient discharges, is mostly inserted, and rarely ought to be omitted; as equity will in some cases bind purchasers to see the money applied according to the trust, if they be not expressly released by the authority of the trust, *Abbot v. Gibbs*, 1 Eq. Ab. 358; *Balfour v. Welland*, 16 Ves. 151.

Effect of making the receipts of trustees valid discharges.

12. The grant of an annuity being a species of conveyance, an *ad valorem* stamp is required for an annuity deed by the 55 G. 3, c. 184. (As to an agreement to grant an annuity, assignment of an annuity, and memorial of an annuity, see *the subsequent precedents*.)

Stamp.

No. LXXXIII.

Agreement to grant Annuity.

No. LXXXIII.

Agreement to grant an Annuity.

A feme covert may enter into an agreement to grant an annuity.

Obs. 1. An agreement for the grant of an annuity is sometimes entered into, for the purpose of completing the transaction at some future period, and may be entered into on the part of a feme covert, with respect to her independent property, *Essex v. Atkins*, 14 Ves. 542. Such an agreement need not be memorialized, as it is not within the 53 G. 3, c. 14, *Jackson v. Lever*, 3 B. C. C. 605; *Nield v. Smith*, 14 Ves. 491; but it is frequently required by way of precaution.

Specific performance when enforced.

2. Specific performance of an agreement to grant an annuity, as a consideration for the purchase of an estate, will be enforced, although the vendor die previous to the completion of the contract, *Mortimer v. Capper*, 1 B. C. C. 156; *Jackson v. Lever*, 3 B. C. C. 605.

Grantor agrees to grant an annuity.

Articles &c. see *ante*, No. XLVI. Betn (*grantor*) of &c. of the one pt and (*grantee*) of &c. of the or. pt *Witness* That the sd (*grantor*) in conson (*a*) of the sum of £ doth hby agree to grant unto the sd (*grantee*) an annty or clear yrly sum of £ (*b*) during the life of the sd (*grantor*) to be pd quarterly from the time of granting the same with a proportional part (*c*) up to and inclusive of the day of his death to be charged upon and issuing out of all those freehold messes tents and heredit of the sd (*grantor*) situate at in the co. of and to be furr secured by the bond and warrant of attorney to confess judgment of the sd (*grantor*) And the sd (*grantor*) shall and will deliver unto the sd (*grantee*) on or befe the day of next a full and perfect abstract of the title of him the sd (*grantor*) to the sd messes tents and herdts (*d*) And also shall and will de-

To secure payment by warrant of attorney.

To make out a good title, •

convey messes, &c.

(a) If the purchase money be not all paid at once, then say, "The sum of £ at the exon of the sd secties and the further sum of £ within the space of cal mths next ensuing."

(b) Or, if it be so agreed, "during the life of the grantee," or "during the lives of nominees or the longest liver of them," or "for a term of years determinable on lives."

(c) As to the reason for this clause, see Pref. s. 4.

(d) If the annuity be secured on leasehold premises, and it be so agreed, say, "But the sd (*grantor*) shall not be required to produce further evidence of his title to the sd preses than the sd lease and all deeds relating thereto." See *ante*, AGREEMENT TO GRANT A LEASE, s. 6.

mise or convey by sufficient and proper conveyes the same heredit and preses unto a psn or psns to be named by the sd (grantee) in such manner and form and with such powers proves condons covts and agrts in the sd deeds or instmts to be contd as are usual in like cases particularly a proviso enabling the sd (grantor) to repurchase the sd annty on giving six cal. mths notice for that purpose and on paying all arrears &c. (a) And that the chas and the exps attending the granting and securing the sd annty shall be borne by the sd (grantor) And the sd (grantee) in conson of the preses doth hby agree to pay unto the sd (grantor) the sum of £ of lful money of Gt Britn at the time of the exon of the sd secties (or the sum of £ at the exon of &c. and the furr sum of £ on the day of &c. as the case may be).

No. LXXXIII.
*Agreement to
grant Annuity.*

and pay all
expenses.
Grantor to pay
the considera-
tion money.

No. LXXXIV.

No. LXXXIV.
*Bond to secure
Annuity.*

Bond to secure the Payment of an Annuity to a former Mistress.

Obs. 1. It is a rule both of law and equity, that *ex turpi contractu actio non oritur*; any consideration therefore which is against the rules and claims of decency will vitiate the contract; but courts of law, as well as those of equity, distinguish between considerations past and considerations future, and consequently a bond purporting to be in consideration of past cohabitation between the obligor and the obligee has been held to be good, 2 Wils. 339; Ambl. 641; Forr. 153; 1 Fonbl. Eq. 228.

Illegality of
consideration
vitiates a bond.

2. As to the memorial of the bond, see subsequent *Precedent of a Memorial*.

3. A bond given as a collateral security for the payment of an annuity requires a stamp of 1*l.* only, when the deed of grant is charged with the *ad valorem* duty imposed on conveyances; but where this is not the case, the bond is charged with an *ad valorem* duty on the amount of the annuity, or sum secured.

Stamp.

Know all Men by these Presents &c. (see BOND.) Whas by Recital of lease and release to secure payment of an annuity.

(a) If the annuity be granted during the life of the grantor, add, "Also a covenant that the sd (grantor) shall at his own expence appear at any office in London or Westminster that his life may be insured." If necessary, also add, And also that the sd (grantor) shall at his own expence insure such pts of the preses as are liable to be damaged or destroyed by fire."

No. LXXXIV.
Bond to secure
Annuity.

Of grant of an
annuity.

Condition.

indentures of lease and rele bearing date respaly on or about the
and the days of the rele being made betn the above
bounden (*Obligor*) of the one pt and the sd (*Trustees*) of the or.
pt certain hereditis therein described situate lying and being &c.
were demised and assured by the sd (*O.*) to the sd (*T.*) their exs
ads and ass from the day of the dece of the sd (*O.*) during the
term of yrs witht impeachment of waste *In trust* yrly and
evry year after the dece of the sd (*O.*) during the life of H. H.
thin named and described by the ways and means thin mentd
to raise and levy one annty or yrly sum of £ free from all
taxes and deductions whatsr and to pay and apply the same by
two half yrly paymts on the day of and the day of
in evry yr the first paymt to be made on such of the sd days
as shd happen next after the dece of him the sd (*O.*) into the
proper hands of her the sd H. H. whether covert or sole or unto
her order to be signed by any note or writing from time to time
after each of the sd half yrly paymts should have become due
but not orwise for her sole and separate use and bent and dispo
during her life independent of any future husband *And* so that
she might not whether covert or sole at any time or times whatsr
make any assmt or dispo by way of anticipation of the sd
annty of £ or any pt thof which shd not actually have ac
crued or become due to the intent that the same might not be
subject or liable to the debts of any future husband of the sd H.
H. but always remain for her maintenance and support *And* it
was thby decl'd that the rect and rectx of the sd H. H. or of the
psn to whom she might appt the sd annty or any pt thof to be
pd in manner afd shd notwithstanding her coverture (if married)
be a sufficient rele and discharge for the same or so much thof
as in such rect or rectx shd be expssd to be recd *And whas* in
conson of the past services of the sd H. H. and from motives of
concern for her int the sd (*obligor*) is desirous of settling upon
her an annuity of £ to commence immly in addition to the sd
annty of £ scd to her by the last in pt recited indre and for
the purpe of carrying the intention of the sd (*O.*) into effect he
hath extd the above written bond subject to the condon hinafr
contd for making void the same *Now the condition* of the above
written obligon is That if the above bounden (*O.*) shall and do
henceforth yrly and evry yr during the life of the sd H. H. well

and truly pay unto the sd (*trustees*) or the survivor of them or the
 exs or ads of such survivor (in addition to the sd annuity of £
 secd by the sd in pt recited indre) one annty or yrly sum of
 £ of lful &c. free from all taxes and witht any deduction
 whatsr by equal half yrly paymts on the day of and
 the day of in evy yr the first of such half yrly paymts
 to be made on the day of next ensuing the date of the
 above written bond (a) to the intent that the same may be
 applied by them the sd (*trustees*) and the survivor &c. Upon such
 trusts for the separate use of the sd H. H. as in the sd in pt
 recited indenture are expressed concerning the sd annuity of
 £ Then &c. (see *post*, BONDS.)

No. LXXXIV.
 Bond to secure
 Annuity.

Bond for Payment of an Annuity, see post, BONDS.

No. LXXXV.

*Grant of an Annuity for the Life of the Grantor secured on
 Freeholds. (General Precedent.)*

No. LXXXV.
 Grant of
 Annuity secured
 on Freeholds.

- Obs. 1. As to stamps required for this deed, see *ante*, Pref. s. 12. Stamp.
 2. As to the forms necessary to be observed in order to render an
 annuity deed valid, see *post*, MEMORIALS.

This Indenture made the day of in the yr of the
 reign &c. and in the yr of our Lord 18 Betn (*grantor*) of &c. Parties.
 of the first pt (*grantee*) of &c. of the second part and (*trustee*)
 of &c. a trustee named and appointed by the sd (*grantee*) for
 the purps hnaft mentd of the third pt *Whas* the sd (*grantor*) is
 seised of or entitled to the sevl messes lds and hereds &c. And
Whas the sd (*grantee*) hath contracted with the sd (*grantor*) for

Recital of
 seisin.

Of contract for
 purchase.

(a) If it be so agreed, add, "or if the sd H. H. shall happen to die betn any
 of the sd feasts or quarter days whereon the sd annty is made paye to them
 respy then if the sd (*obligor*) his hrs &c. shall and do pay or cause to be pd unto
 the sd (*T.*) or the survivor of them a proportionate pt of such annty or yrly sum
 according to the time which the sd H. H. may happen to live after the then last
 quarter's paymt shall herein become due to the sd H. H. without any deduction
 or abatement whatsr."

No. LXXXV. <i>Grant of, secured on Freeholds.</i>	the absolute purchase of one annty or clear yrly rent-charge or sum of £ during the life of the sd (<i>grantor, or grantee, or nominees</i> "or the survivor of them," <i>as the case may be</i>) free from taxes and witht any deduction whatr subject nevss to a provo or agrt for the repurchase of the same hinaft contd (a) <i>And whas</i> for securing the paymt of the sd annty or clear yrly sum of £ the sd (<i>grantor</i>) by his certain warrant of attorney bearing even date with these prests hath authorized A. B. and C. D. attornies of her Maj. Ct of Q. B. to confess judgmt agst him in an action of debt for the sum of £ and costs of suit <i>And whas</i> it was agrd upon the treaty for the purchase of the sd annty that for the furr securing unto the sd (<i>grantee</i>) his exs ads and ass paymt of the sd annty or &c. of £ the same shd be chagd upon and issuing out of the sd messes or tents lds and heredts <i>And</i> it was furr agrd betn them the sd (<i>grantor</i>) and (<i>grantee</i>) that the costs and exps attending the contract for the sd annty and for preparing and perfecting the secties for the same and for inrolling a memorial thof shd be borne and pd by the sd (<i>grantor</i>) <i>Now this Indre witnesseth</i> That in pursuance of the sd in part recited agrt and for and in conson of the sum of £ (b) of lful &c. to the sd (<i>grantor</i>) in hand well and truly pd by the sd (<i>grantee</i>) at or before the sealing and delvy of these prests the rect whereof the sd (<i>grantor</i>) doth hby acknge and of and from the same and evy pt thof doth acquit release exonerate and for ever discharge the sd (<i>grantee</i>) his exs and ads by these prests He the sd (<i>grantor</i>) <i>Hath</i> given granted bargained and sold and by these prests <i>Doth</i> give grant bargain and sell unto the sd (<i>grantee</i>) his exs ads and ass during the natural life of the sd (<i>grantor</i>) <i>One annuity</i> or clear yrly rent-charge or sum of £ to be issuing and paye out of and charged and chagbe upon <i>All that</i> messe or tents &c. <i>To have and to hold</i> (c) receive perceive and take the sd annty or yrly
Of warrant of attorney.	
Of annuity to be secured on the freeholds.	
Testatum.	
Grant of annuity.	
Habendum.	

(a) If it be so agreed, say, "*And whas* the sd (*grantor*) by his bond or obligation in writing bearg even date with these prests hath become bounden to the sd (*grantee*) in the penal sum of £ with the condon thereunder written for making void the same upon payment of the sd annty or yrly sum at the times and in manner hnaft mentd." (As to the necessity of a bond, see *ante*, Pref. sect. 9.)

(b) For a variation in this part of the *testatum*, see *post*, No. 89.

(c) As to the force of the words "receive" and "perceive," see Pref. sect. 2.

rent-charge or sum of £ unto the sd (*grantee*) his exs ads and ass henceforth during the natural life of the sd (*grantor*) (a) to be pd and paye to him the sd (*grantee*) his exs ads and ass at or in the Common Dining-Hall of the Inner Temple in the Co of Middlesex by four equal quarterly paymts betn the hours of *kc.* on the day of the day of the day of and the day of in evy yr free from all taxes and witht any deduction or abatement whatsr the first quarterly paymt to be made on the day of now next ensuing (b) And in case the sd (*grantee*) shd die in the interval betn any of the sd quarterly days of paymt then also a proportionate (c) pt of the sd annty for the time which at the dece of the sd (*grantor*) shall have elapsed of the quarterly paymt then growing due such proportionate pt to be pd within days after the dece of the sd (*grantor*) And the sd (*grantor*) for himself his hrs exs and ads doth hby covt promise and agree with and to the sd (*grantee*) his exs ads and ass That he the sd (*grantor*) his hrs exs or ads shall and will well and truly pay or cause to be pd unto him the sd (*grantee*) his exs ads or ass the sd annty or yrly rent-charge or sum of £ during the life of him the sd (*grantor*) at or upon the days and in the manner hinbefe apptd for the paymt thof *Provided always* and it is hby decl'd and agrd by and betn the sd pties hereto and particularly the sd (*grantor*) for himself his hrs and ass doth hereby covt promise and agree with and to the sd (*grantee*) his exs ads and ass That in case the sd annty or yrly rent-charge or sum of £ shall happen to be due and unpd for the space of 21 days next after any of the sd days or times hinbefe apptd for the paymt thof Then and in evy such case and so often as it shall happen it shall and may be lful to and for the sd (*grantee*) his exs ads and ass into and upon the sd messes tents lds

No. LXXXV.
Grant of,
secured on
Freeholds.

Covenant to
pay annuity.

Clause of dis-
tress.

(a) Or "of the sd (*grantee*)," or "during the natural lives of the sd (*nominees*) or during the life of the survivor of them," or "for and during the term of *9* years if the sd (*grantor*) or if the sd (*nominees*) or the survivor of them should *o* long live." (See *ante*, Pref. sect. 4.)

(b) As to the necessity of this clause, see *ante*, Pref. sect. 3, and also APPORTIONMENT.

(c) Before the 4 & 5 W. 4, c. 22, (see Dig. p. ii. tit APPORTIONMENT) this clause was absolutely necessary where it was intended that the annuity should be apportioned.

No. LXXIV.
Grant of,
assured on
Forthwith.

heredit and preses so chngd with the paymt of the sd
or into or upon any pt thof to enter and distrain for th
annty and all arrears thof and the distress and distress
and there found to take drive carry away and impound
same in pound to detain and keep until the sd annty
etc. of £ and all arrears thof shall be fully pd and s
and all costs chas and exps whatsr sustained and occ
by or attending the making taking and keeping any su
treases shall be fully pd and satisfied And in deft of
thof in due time after any such distress or distresses s
made and taken to appraise sell or dispose of such dist
distresses or any pt thof or orwise to act therein accor
the due course of law in like manner as in cases of
taken for nonpaymt of rent reserved upon common lea
the intent that thby and therewith the sd (*grantee*) his
and ass shall and may be lfully pd and satisfied the sd ar
Clause of entry. yrly &c. and all arrears thof *And further* That in case
annty or any pt thof shall be behind or unpd for the s
40 days next after any of the days or times hnbeft app
the payment thof [although (a) no formal or legal deman
have been made thof] Then and so often it shall and r
lful to and for the sd (*grantee*) his exs ads and ass in
upon the sd preses or into or upon any pt thof in the n
the whole to enter and the same to have hold and enj
the rents and profits thof and of evy pt thof to rece and t
and for his and their own use and bent until he or the
be thby and therewith or orwise fully pd and satisfd
annty as shall accrue and grow due during such time as
sd (*grantee*) his exs ads or ass shall continue in posson
sd preses after such entry togr with all losses costs chas
and exps as shall be occasioned by nonpaymt thof as af
posson to be witht impeachment of waste other than wilf
malicious waste (b) *And this Indenture further witnesseth*
in furr pursuance of the sd agrt and for the furr bett
more effectually securing the paymt of the sd annty or

Further testa-
um.

(a) See *ante*, Pref. sect. 8.

(b) If the grantor be tenant for life, add, "as far as the sd (*grantor*) ca
that privilege."

sum of £ and also in conson of 10s. of lful money of
 tain to the sd (*grantor*) in hand pd by the sd (*trustee*) at
 the sealing and delivering of these prests the rect whof
 ackngd he the sd (*grantor*) at the request and by the
 and apptmt of the sd (*grantee*) [testified by his sealing
 elivering of these prests] *Hath* granted bargained sold
 emised and by these prests *Doth* grant bargain sell and
 unto the sd (*trustee*) his exs &c. *All those* the sevl messes
 ts lds and hereds with the apts hinbefe mentioned and
 with the paymt of the sd annty with all outhouses &c.
 ie revn &c. and the estate &c. (see RELEASE) *To have*
hold the sd messes or tents lds hereds and preses hby
 d and demised or orwise assured with the apts unto the
) his exs ads and ass from the day next before the day of
 te of these prests for and during the term of 99 years
 next ensuing and fully to be completed and ended with-
 peachment of waste (a) *Upon the trusts* nevss and to
 or the ends intents and purps hinafr expssd and decld
 ning the same that is to say *Upon trust* in the first place
 mit and suffer the sd (*grantor*) to rece and take the rents
 and profits of the sd hby demised preses with the apts
 left shall happen to be made of or in paying the sd annty
 ie part thof on or at the days and times and in manner
 e apptd for payment of the same *And upon this further*
 That in case the sd annty or yrly sum of £ or any pt
 hall happen to be behind or unpd by the space of 40 days
 after any of the sd days or times of paymt then and so
 as the same shall happen the sd (*T.*) his exs &c. do and
 by and out of the issues and prfts of the sd messes preses
 / pt thof or by demising leasing mtgaging or selling the
 preses or any pt thof for all or any pt of the sd term of
 ars or by such or. ways or means as to the sd (*T.*) his &c.
 seem meet raise and levy such sum or sums of money as
 be sufficient to pay and satisfy the said annty or yrly &c.

No. LXXXV
Grant of,
secured on
Freeholds.

Demise of lands
 to trustee for 99
 years.

Upon trusts.

To permit
 grantor to take
 the rents and
 profits.

To raise arrears
 by mortgage or
 sale.

If it be needful, add, "Together with all deeds muniments writings and
 ces whatsr which in anywise relate to the same and which are or at any
 all or may be in the posson custody or lful power of him the sd (*grantor*)
 exs or ads witht any action or suit at law or in equity."

No. LXXXV. *Grant of, secured on Freeholds.* or so much thof as from time to time shall happen to arrears and unpaid togr with all such losses costs chas da exps as the sd (*grantee*) his exs &c. shall sustain or in consequence of the nonpaymt of the same annty as afd sd (*T.*) shall incur in the exon of the trusts reposed in hi shall apply the mos arising thby in or towds the pay satisfaction thof accly (a) And shall permit and suffer (*grantor*) his hrs and ass to rece the surplus [if any] rents issues and profits of the sd messes heredts and pr afd to and for his and their own use and benefit And purpose of facilitating any such sale or mtge it is hby dec agrd by the pties to these prests that all contracts sales assignmts and things which shall be entered into max exted by the sd (*T.*) his exs &c. of or concerning the sd or tents and preses or any pt thof shall to all intents and whtsr be as valid and effectual in the law as the same have been if the sd (*grantor*) his exs &c. had actually joi and exted the same *Provided always* and it is hby fun and agrd by and betn the pties hto That the sd (*T.*) his or ass or any of them shall not be answe for any loss may happen to the sd preses in the exon of the trusts l expssd unless the same shall happen through his or the wilful deft And that the rect or rectx of him the sd (*T.*) &c. for any mos paye to him or them by virtue of these shall be a sufficient discharge (b) or discharges unto t or psns paying the same and that the psn or psns makin paymts shall not be bd or liable to see to the applicon o

Contracts &c. of trustee good without consent of grantor.

Indemnity to trustees.

Receipts of trustees to be good discharges.

(a) If it be so agreed, say, "And from and after and subject to the afd *Upon trust* to lay out and invest the residue and surplus of the m shall arise and be produced by such sale or sales in the name or name the sd (*T.*) his &c. in the purchase of a competent share or competent the parliamentary stocks or funds of Gt Britn or at int upon govt sect from time to time altered varied and transposed in for and upon such secties of the same or like nature as often as the sd (*T.*) his hrs &c. sh fit and to stand possessed of and interested in such stocks &c. upon t following, that is to say That the sd (*T.*) his &c. shall during the life (*grantor*) pay and satisfy unto the sd (*grantee*) his exs &c. the sd annnt &c. of &c. expssd to be hby granted at the days and times and in hinbefe appted for paymt thof."

(b) As to the effect of this clause, see Pref. sect. 11.

or be answer or accountable for the loss misapplication or application thereof nor be obliged to inquire or ascertain whether such sales or mortgages shall be necessary for all or any the purposes hereinbefore mentioned *Provided always* and it is hereby further declared and agreed That after the decease of the said (*grantor*) when the trusts hereinbefore declared concerning the said term of 99 years shall in things be fully satisfied and performed or shall have become necessary or incapable of being performed Then and thenceforth the said term or so much thereof as shall not be disposed of under the trusts aforesaid shall cease determine and be absolutely ended And the said (*grantor*) for himself his heirs executors and assigns hereby covenant promise and agree with and to the said (*grantee*) his heirs executors &c. in manner following that is to say That he the said (*grantor*) now at the time of the sealing and delivery of these presents is in himself full power and absolute authority to charge all singular the said messuages or tenements lands and hereditaments hereby charged made chargeable with the payment of the said annuity or yearly sum and also to demise the same with the apartments unto the said upon the trusts and to and for the intents and purposes aforesaid *And also* that the said premises now are and shall remain and be sufficient to such distress and entry as aforesaid *And* shall be holden enjoyed as a security for the said annuity without any hinderance interruption claim and demand whatsoever from or by him the said (*grantor*) his heirs executors or assigns according to the true intent and meaning of these presents *And that* free and clear and freely clearly acquitted exonerated and discharged by him the said (*grantor*) his heirs and assigns of and from and against all and all manner of former estates rights charges and incumbrances whatsoever *And* that he the said (*grantor*) his heirs executors and assigns and every other person claiming or lawfully or equitably claiming or who shall or may have claim any estate right title trust and interest whatsoever either at law or equity in to or out of the said hereditaments and premises hereby granted and demised and any part thereof shall and will from time to time and at all times hereafter during the continuance of this security on every reasonable request of the said (*grantee*) his heirs executors &c. but until such sale or mortgage shall be made at the costs and charges of the said (*grantor*) his heirs executors or assigns and after such sale or mortgage then at the costs and charges of the person or persons to whom the said premises shall be conveyed make do and extend all such further and or lawful

No. LXXXV.
*Grant of,
secured on
Freeholds.*

Cesser of term.

Covenants.

Grantor has
power to charge
premises.

Premises suf-
ficient for dis-
tresses.

Free from in-
cumbrances.

No. LXXXV.
Grant of,
secured on
Freeholds.

And for further
assurance.

That grantor
will appear at
insurance office.

And not leave
the kingdom
without giving
notice.

Warrant of at-
torney intended
only as col-
lateral security.

and reasone acts deeds matters and things whatsr for the more effectually granting demising and assuring the same preses unto the sd (T.) his exs &c. for and during the then remainder of the sd term of 99 yerrs *Upon* the trusts hinbefe decl'd as by the sd (grantee) his exs &c. or his counsel in the law shall be lfully and reasny advised or devised and required *And moreover* that the sd (grantor) shall and will from time to time during the continuance of the sd annnty at the request of the sd (grantee) his exs &c. appear in person at office or any other office for life insurances within the cities of London and Westminster or send such notice in writing of his place of abode togr with a certificate or certificates of the state of his health for the purpe of enabling the sd (grantee) his exs &c. to insure or keep insured at the cost and chas of the sd (grantor) his exs ads or ass any sum or sums of money not exceeding £ upon the life of him the sd (grantor) *And furr* that he the sd (grantor) shall not nor will at any time hrafr during his life depart from or leave the kingdom or go or travel upon the seas or reside in foreign parts witht giving evy time sufficient notice in writg to the sd (grantee) his exs &c. of his intention so to do in order to enable him the sd (grantee) his exs &c. to make known the same if necessary at the sd office so that the additional premium or premiums if any to be hby incurred for the purpe of keeping on foot the sd policy of insurance on the life of the sd (grantor) may be pd *And also* that he the sd (grantor) shall not nor will do any act or thing whatsr whereby or by means whereof any policy or policies for effecting such insurance as afd shall become void or voidable or orwise prejudiced or impeached *Provided always* and it is hby declared and agrd by and betn the pties hereto That the sd warrant of attorney and the judgmt to be entered up by virtue thof are intended only as a collateral secty for the paymt of the sd annnty or yrly &c. on or at the sevl days and in the manner hinbefe apptd for paymt thof as afd *And that* no exon or exons shall be issued or taken out upon the sd judgmt unless and until some payment of the sd annnty shall be in arrear for the space of 21 days next after some or one of the sd days hinbefe apptd for paymt thof as afd *Provided never-*theless that when and so often as the sd annnty shall be so in arrears then and in such case it shall be lful for the sd (grantee)

his exs &c. to sue out such exon for recovering all or any pt of the sd annnty and all costs and chas which the sd (*grantee*) his exs &c. shall bear pay sustain or be put unto by reason of the nonpaymt of the same. And that it shall not be necessary for the sd (*grantee*) his exs &c. to revive the sd judgment nor to do any act to keep the same on foot notwithstanding it shall not have been entered on record for the space of one yr (a) or upwards and notwithstanding any rule or practice of the sd court in which the sd judgment shall have been entered up And that the sd (*grantor*) his exs or ads shall not nor will attempt by any ways or means to take advantage of such want of revival of the sd judgment And lastly it is hby decld and agrd by and betn the pties to these prests and particularly the sd (*grantee*) for himself his hrs exs and ads doth hby covt promise and agree with and to the sd (*grantor*) his hrs exs ads and ass That in case the sd (*grantor*) his hrs &c. at any time after the expiration of yrs from the date hereof be desirous of (b) purchasing the sd annnty or yrly rent-charge or sum of £ and of such his or their desire shall give unto the sd (*grantee*) his exs ads or ass six calr mths notice in writing under his hand or in lieu of such notice shall pay one half yr's paymt of the same annnty Then and in such case from and immly after the expiration of such notice or upon such paymt in lieu thof and upon paymt by him the sd (*grantor*) his exs &c. of the sum of £ for the repurchase of the same annnty togr with all arrears and sums which shall be then due for or in respect of the same he the sd (*grantee*) his exs &c. shall and will at the request costs &c. of the sd (*grantor*) his exs &c. assign rele and surrd or orwise dispose of the sd annnty or yrly &c. and all the then subsisting pties for the same and also all and singular the hereditas and pties hby made chage with the paymt thof for the residue then remaining and unexpired of the sd term of 99 years or so much thof as shall not have been disposed of under or by virtue of the trusts hinbefe expssd And shall deliver up these prests and the afid warrant of atty to the sd (*grantor*) his exs or ads

No. LXXXV.
Grant of,
secured on
Freeholds.

Grantee not ob-
liged to revive
judgment.

Power to re-
purchase.

The grantee will
assign annnty
&c.

(a) As to the necessity of reviving judgment within the year, see Dig. p. ii. tit. EXECUTION; p. iii. tit. JUDGMENT.

(b) As to the necessity of this clause, see ante, Pref. sect. 10.

No. LXXXV. *Grant of, secured on Freeholds.* to be cancelled and acknge or cause satisfaction to be ackngd on record of the sd judgment [if any] And also at the like request costs and chas of the sd (*grantor*) his exs &c. assign unto the sd (*grantor*) his exs &c. the bent of any policy of insurance which may have been effected by the sd (*grantor*) his exs &c. and which shall be then subsisting and in force or capable of being kept on foot or renewed in such manner and form as he the sd (*grantor*) his exs &c. or his or their counsel in the law shall reasonably require. *In witness &c.* see *ante*, No. XLVI.

GRANTS OF ANNUITIES SECURED ON COPYHOLDS.

- | | |
|----------------------------------|--|
| 1. <i>Grant by Surrender.</i> | 3. <i>Estate of Surrenderor and Surrenderee until Admission.</i> |
| 2. <i>Estates pur autre vie.</i> | 4. <i>Warrant of Attorney a Security.</i> |

Grant by surrender.

SECT. 1. Where an annuity is to be secured on copyholds, it is usual either to covenant to make a surrender, or, which is the safer course, to make a previous surrender on condition, with a deed of grant, containing the usual covenants. A demise to a trustee is not commonly made, as no term can be granted without the licence of the lord for longer than one year.

Estates pur autre vie.

2. As the 29 Car. 2, c. 3, s. 12, and 14 G. 2, c. 20, s. 9, giving the benefit of estates *pur autre vie* to the executors of tenant for life, do not extend to copyholds, of which there can be no general occupant, *Withers v. Withers*, Amb. 151; *Zouch v. Forse*, 7 E. 186; the covenant to surrender ought to be limited to the use of the grantee for a term of years, to prevent the annuity determining on the grantor's death (see ANNUITY, sect. 2).

Estate of surrenderor and surrenderee until admittance.

3. Where an actual surrender is made, the surrenderor remains tenant to the lord until admission, insomuch, that prior to the 55 G. 3, c. 192, now 7 W. and 1 V. c. 26, see Dig. p. iii. tit. WILLS, the surrenderor could not, after such surrender, devise the copyholds without a previous surrender to his will, *Knebel v. Scrafton*, 8 Ves. 30; *Doe v. Wroot*, 5 E. 130; Coote, Morg. 111. So likewise a surrenderee, not being tenant until admittance, cannot in the meantime pass the lands, although he may make an equitable transfer of them, *Doe v. Tofield*, 11 E. 246; nor recover actual possession of the premises on default; but the surrenderor being considered in

uity as trustee for the surrenderee, *Holdfast v. Clapham*, 1 T. R. 10, it is not usual for him to be admitted until default, in order to void the fees for admission and performance of the customary services.

No. LXXXV.
Grant of,
secured on
Freeholds.

4. Formerly a judgment would not attach upon copyholds, although it would bind the goods of the copyholder, and give priority, as in other cases, 2 Eq. Ca. Ab. 222. It is presumed that since the 3 & 4 W. 4, c. 104, making copyholds assets for the payment of debts, the law is in this respect otherwise. A warrant of attorney may however in some cases be advisable as an additional security.

Warrant of at-
torney a secu-
rity.

No. LXXXVI.

Grant of an Annuity for the Life of the Grantee secured on Copyholds.

No. LXXXVI.
Secured on
Copyholds.

This Indenture &c. (as in the last precedent) Betn. (grantor) of &c. of the one part and (grantee) of &c. of the other pt Whas &c. (recite seisin of grantor, also contract for purchase of an annuity and (a) warrant of attorney, as in the last precedent.) (b) Now &c. in conson of &c. to the sd (grantor) in hand &c. by the sd (grantee) at &c. pd the rect whof &c. He the sd (grantor) Hath given granted &c. unto the sd (grantee) and

Testatum.

(a) See *supra*, sect. 4.

(b) Where a surrender has been previously made, say, "And whas at a special court-baron held in and for the manor of in the co of the sd (grantor) hath surrd by the rod into the hands of the lord of the sd manor on the day of the date of these presta (or, if out of court, to two customary tenants, "by the hands and acceptance of (copyholders) two of the customary tenants of the sd manor") accordg to the custom of the sd manor All those &c. (parcels) To the end and intent that the sd (grantee) his hrs or ass shall or lfully may be admitted tenant thereto to be holden at the will of the lord according to the custom of the manor subject to the rents and services in respect thof on condon that if the sd (grantor) his hrs exs or ads shall well and truly pay or cause to be pd unto the sd (grantee) his hrs or ass for and during the natural life of the sd (grantee) or his ass one annnty or yrly sum of £ and also a proportional pt of the sd annnty free from taxes on the days and the manner hnaft parlarly mentd or if the sd (grantor) his hrs ads or ass should repurchase the sd annnty upon the terms hnaft mentd Then and in either of the sd cases the sd surrd shall be void to all intents and purps whater."

Where sur-
render is pre-
viously made.

No. LXXXVI. his ass (a) during the natural life of the sd (grantee) One An-
Secured on
Copyhold.

Habendum.

Further testa-
ment.

nuity or &c. to be issuing out of &c. All those &c. To Have
 and to Hold &c. And the sd (grantor) for himself &c. covt to
 pay &c. And (b) this Indre farr witnesseth That for the furr
 &c. securing the paymt of the sd annty &c. of £ at or upon
 the days &c. as afd He the sd (grantor) doth hby for himself his
 hrs exs ads and ass covt &c. with &c. (grantee) and his ass that
 he the sd (grantor) his hrs exs &c. at or before the next general
 court which shall be holden in the sd manor of shall and
 will surrd into the hands of the lord or lady of the sd manor of

acording to the custom of the sd manor All those &c.

with the appts hnbefore mentd To the end and intent that the
 sd (grantee) or his ass shall or lfully may be admitted thereto
 to be holden at the will of the lord according to the custom of
 the sd manor and subject to the rents and services in respect
 thof on condition nevss that if the sd (grantor) his hrs exs ads
 or ass shall well and truly pay the sd annty &c. unto &c.
 (grantee) and his ass during the natural life of him the sd
 (grantee) And also shall well and truly pay unto the exs ads
 or ass of the sd (grantee) in case the sd (grantee) shd depart
 this life on any of the sd days of payment the whole of the sd
 quarterly payment which shall then have become due and paye
 and if on any other day then a proportional part of the said
 annty for the time which at the dece of the sd (grantee) shall
 have elapsed of the quarterly payment then growing due or in
 case of a repurchase of the said annty in pursuance of the provo
 hnaft contd in that behalf Then and in either such case the
 surrd hnbefe covenanted to be made shall be and become abso-
 lutely void to all intents and purps whatsr And in case the sd
 (grantee) or his ass shall have been admitted to the said preses
 or any pt thof he and they shall thenceforth stand seised or

Condition to
 make void.

Declaration of
 trusts.

(a) Where an annuity is granted during the life of the grantee, it must be to
 him and his assigns, not his exs &c.

(b) Where a surrender has been previously made, omit this further *testatum*,
 and proceed, "And it is hby decld and agrd That in case the sd (grantee) or
 his ass shall have been admitted to the sd preses or any pt thof he and they
 shall then henceforth stand seised and possessed of the same Upon &c." as
 usual.

possessed of the same *Upon* the trusts and to and for the ends
 intents and purps and with under and subject to the powers
 rovos declons and agrmts hnaft expssed and decld concerning
 the same that is to say *Upon Trust* that he the sd (*grantee*) and
 his ass shall and may by and out of the rents issues and profits
 thof or any pt thof or by sale or mortge thof or by all or any
 one or more of the sd ways and means at his discretion raise
 and levy such sum and sums as he or they shall deem sufficient
 to pay and satisfy so much of the sd annty &c. as shall be then
 due and in arrear togr with all costs chas dams and exps as
 shall have been sustained and expended *And upon this furr*
Trust to place out and invest the residue or surplus of the
 money to arise by such sale or mortge and the produce of the
 sd hereds and preses at int in the name or names of the sd
 (*grantee*) or his ass *And* it is hby decld and agrd by and betn
 the pties to these prests That the sd (*grantee*) his exs ads or
 ass shall stand possessed of and interested in the mos to be
 placed out and invested *Upon Trust* by and out of the int divds
 and proceeds thof and in case the same shall be insufficient
 then by selling and disposing of the principal or capital of the
 sd stocks funds or secties and therewith to retain and pay to
 himself the sd (*grantee*) his exs ads and ass so much of the sd
 annty or yrly &c. as shall from time to time become due and
 paye togr with all rease costs chas and exps incurred or in
 respect thof *And* from and after full paymt and satisfaction
 thof then in trust to pay and apply the residue and surplus of
 the divds and int thof or of so much as shall not have been sold
 or disposed of for the purps afd unto the sd (*grantor*) his exs
 ads and ass *Provided always* and it is hereby decld &c. that
 from and after the dece of the sd (*grantee*) and full paymt unto
 the exs ads or ass of the sd (*grantee*) of the sd annty and such
 proportional part as afd and all costs chas dams and exps as
 afd then the sd sevl pieces and pcls of ld and hereds hby covtd
 to be surrdrd or so much thof as shall not be disposed of under
 the trusts hnbefe decld shall be *In Trust* for the sd (*grantor*)
 his hrs and ass to be surrendered or orwise assured as he or
 they shall direct or appt *And furr* that all contracts sales &c
And also that the sd (*grantee*) his exs ads and ass or one of
 them shall not be answerable &c. *And* that the rect or rects

No. LXXXVI.
 Secured on
 Copyholds.

After decease
 of grantee and
 payment of an-
 nuity, that the
 premises shall
 be held in trust
 for the grantor.

No. LXXXVI. &c. And the sd (*grantor*) doth hby for himself &c. (*Covenants for title &c.*) *Provided always (Clause for repurchase &c.) (See last precedent.)*

Secured on Copyholds.

No. LXXXVII.

Secured on Leaseholds by Husband and Wife.

No. LXXXVII.

Annuity or Rent Charge out of Leasehold Premises, secured by Husband and Wife.

Recital of settlement.

This Indre made &c. Betn. (Husband) and A. his wife formerly (maiden name) spinster of the first part (Trustees) of the second pt and (Grantee) of &c. of the third pt *Whas* in pursuance of articles of settlement made on the marre then intended and which aftwds took effect betn the sd (*H.*) and A. his sd wife bearing date &c. and made betn the sd pties therein mentioned the messe or tent or dwellg-house hnfter described now stands limited to and vested in the sd (*T.*) in such manner and form that the sd A. may with the consent of her sd husband dispose of the same at pleasure in the event of her dece witht leaving issue of the sd intended marre and in the meantime rece the rents issues and profits thof to the sole use of herself or her ass independently of her sd husband *And whas* there has not yet been nor is there any probability of there being in future any issue of the sd marre *And whas* by indre of lease of three pts dated &c. betn the sd (*T.*) of the first pt the sd (*H.*) and A. his wife of the second pt and (*lessee*) of the third pt *It was witnessed* that they the sd (*T.*) did at the request direction and apptmt of them the sd (*H.*) and A. his wife testified &c. demise lease and to farm let and the sd (*H.*) and A. his wife did demise lease ratify and confirm unto the sd (*lessee*) his exs ads and ass *All that &c. To Hold* from the 25th Sept. last past for the term of thence next ensuing at the yearly rent of paye quarterly on the days thin mentd unto the sd (*T.*) their exs &c. *And whas* the said (*H.*) and A. his wife having occasion for the sum of £ have requested the sd (*grantee*) to advance them the same which he has agreed to do upon having an annual sum of £ secured to him in lieu thof out of the rent reserved by the sd in pt recited indre of lease and the pres thby demised during the now residue of

Recital of lease.

years at the times and in manner hnfter expssd *Now* No. LXXXVI
is Indre witnesseth That in conson of £ pd by the sd *Secured on*
rantee to (H.) and A. his wife the rect whof they do hby *Leaseholds by*
 knge and declare that the same is in full for the absolute *Husband and*
 urchase of the sd sum or yrly rent-charge of £ and *Wife.*
 and from the sd sum of £ and evy pt thof do and *Testatum.*
 ach of them doth acquit &c. And in conson of 5s. paid by
rantee to (T.) they the sd (H.) and A. his wife and they the
 d (T.) have and each of them hath according to their sevl
 espive estes ints powers and authties given granted bargd and
 old and by these prests do and each of them doth give &c.
 ell and confirm unto the sd (*grantee*) his exs &c. one clear
 annual sum or yearly rent of £ of lful money &c. to be
 yearly issuing out of and chgd and chgble upon *all that* &c.
 demised by the before in pt recited indre of lease and also out
 of and from the rent thby reserved *To Have* hold perceive *Habendum.*
 rece take and enjoy the sd annual sum or yearly rent of £
 unto the sd (*grantee*) his exs &c. from the day of the date
 hereof for and during all the rest and residue thence to come
 and unexpired of the sd term of yrs in or by the sd
 indre of lease granted as afid to be pd to the sd (*grantee*) his
 exs &c. at the Royal Exchange in the city of London by four
 equal quarterly payments that is on &c. in each and evy yr
 betn the hours of ten and eleven of the clock in the forenoon
 witht any deduction or abatement whatsr in respect of any taxes
 &c. the first payment to be made on &c. And the sd (H.) and A. *Appointment.*
 his wife do and each of them doth hby expssly direct and appt
 and require the sd (T.) or the trees for the time being of the sd
 demised pres to pay and satisfy the yrly rent accg by and out
 of the rents and prfts thof. *Provided always* that if deft be *Clause of d's-*
 made in the paymt &c. the sd (*grantee*) his exs &c. shall have *treas.*
 full and free liberty to enter into and distrain upon the said
 messe &c. hby charged with the paymt thof in like manner as
 for rent reserved on common leases to the intent to pay and
 satisfy himself and themselves the annual sum or yrly rent of
 £ or the pt thof so in arrear and all costs &c. attending
 the nonpaymt or recovery of the same *And also* that in case *Clause of en*
 the sd annual sum or yrly rent of £ or any pt thof be at
 any time unpd for the space of fifteen days next after any of

No. LXXXVII.
*Secured on
 Leaseholds by
 Husband and
 Wife.*

Receipts suffi-
 cient discharges.

Covenants from
 husband and
 wife.

the days &c. then and so often [lawful demand having been previously made of the sd annual sum or the arrears thof] it shall be lful for the sd (*grantee*) his exs to enter into and upon all and singular or any pt of the sd messe and to have hold and enjoy the same and to rece and take the rents issues and prfts thof to his and their own proper use until he or they shall thby or orwise be fully pd and satisfied the sd clear net annual sum or yrly rent of and all arrears thof due at the time of such entry or aftwds during the continuance of such posson Togr with all costs dams and exps sustained or occasioned by reason of the nonpaymt or recovery thof And it is hby dekl and agrd that the rects of the sd (*grantee*) shall be discharges for the sums expssd thin (*Covt from husband and wife that they or the trees would pay the sd sum of £ without deduction*) And furr that the sd messe demised by the sd indre of lease shall remain and be charged with the sd annual sum or yrly rent of £ and also the powers and remedies hby created for securing and enforcing payment thof during all the now residue of the sd term of yrs and that the same messe &c. shall be holden and enjoyed subject thto (*Covt for husband and wife to insure the pres, see ante, No. LXXXV*).

In witness &c. see ante, No. XLVI.

No.
 LXXXVIII.

*Secured on
 Leaseholds.*

No. LXXXVIII.

Assignment of a Leasehold Estate as a Collateral Security for the Payment of an Annuity for Lives.

Recital of lease.

This Indenture &c. see ante, No. LXXXV. Betn (grantor) of &c. of the one pt (grantee) of &c. of the or. pt and (trustee) of &c. a trustee named by and on behalf of the sd (grantee) Whas by indenture bearing date &c. and made Betn (original lessor) thin described of the one pt and (lessee) also thin described of the or. pt For the consons thin mentd the sd (lessor) did demise unto the sd (lessee) his exs ads and ass All that piece or pcel of ground &c. To hold the same with the apts unto the sd (lessee) his exs ads and ass from the day of then last past during the term of yrs wanting ten days thence next en-

under the clear yrly rent of £ paye quarterly on the
in mentd *And* subject to the several covts agrmts and
thin contd *And whas* by divers mesne assnmts and
cts in the law parlarly by indre of assnmt bearing date
about the day of and made betn (*assignor*)
scribed of the one pt and the sd (*grantor*) of the or. pt
piece or pcel of ground messe buildgs and or. the preses
sed in the sd recited indre were ased to or became vested
sd (*grantor*) *And whas* the sd (*grantor*) in conson of the
£ to be to him pd by the sd (*grantee*) hath agreed
it unto him the sd (*grantee*) his exs ads and ass one annnty
ring the natural lives of (*nominees*) and the life of the
of them *And* for better securing the payment of the sd
to the (*grantee*) he the sd (*grantor*) by his bond &c. bear-
in date herewith and extd immediately before these prests
stands bd to the sd (*grantee*) his exs ads and ass in the
sum of £ with a condon thereunder written that if the
ntor) his exs ads or ass shd and did well and truly pay
he sd (*grantee*) his exs &c. during the lives of the sd (*N.*)
e life of the longest liver of them the sd annnty or &c. of
clear of all taxes chas and deductions whatsr on the two
ays and in manner as therein and hnaft mentd then the
d to be void as in and by the sd bond &c. will more fully
And whas previous to the granting of the sd annnty he
(*grantor*) proposed and agrd to assign the messe tents
ses so assigned and vested in him as afd as and for a
cty for paymt to him of the same annnty in such manner
r that purpe &c. mentd and exprsd *Now* &c. in pursuance
rformance of the sd agrt and in conson of &c. to the sd
or) in &c. pd by the sd (*grantee*) at &c. in full for the ab-
purchase of the sd annnty so granted and paye to him the
antee) by the sd bond as afd the rect &c. and for &c.
&c. unto &c. (*grantee*) his &c. during the lives &c. (see
lo. LXXXV.) *He* the sd (*grantor*) *Hath* granted &c. [see
ASSIGNMENTS (LEASE)] *all that* &c. with the apts as the
is now in the occupation of &c. comprised in and de-
by the sd in pt recited indre and all the este &c. (see *post*,
&c.) together with the sd indres of lease and assignmts

No.
LXXXVIII.
*Secured on
Leaseholds.*

Mesne assign-
ments.

Contract for
purchase.

Bond.

Agreement to
assign lease.

No.
LXXXVIII.
Secured on
Leasehold.

Habendum.

Declaration of
trusts.

Proviso for
avoidance of
assignment, &c.

and all bent and advantage whatsr to arise be had or made by virtue of a certain instrument or policy of insurance dated numbered made to and since assigned to the sd (*grantor*) and insured in &c. in a certain fire office &c. whby the sum of £ is to be pd in case the same messe &c. shall be burnt or damaged by fire as thin mentd *To Have and to Hold* the sd messe &c. unto the sd (*grantee*) his exs &c. from the now to come &c. in as large full ample and beneficial manner to all intents and purps as he the sd (*grantor*) could or might have had held or enjoyed the same in case these prests had not been made *Upon the trusts* nevss and to and for the ends intents and purps hnaftsr expsed and decld that is to say In the first place for the better securing the paymt of the sd annty or &c. of £ according to the true intent and meaning of the sd in pt recited bond and of these prests That it shall and may be lful for the sd (*grantee*) his exs &c. during the lives &c. to levy and yrly to take rece and enjoy out of the rents issues and profits of the sd hby assd messe &c. the sd yrly sum of £ witht any deduction or abatement whatsr the same to be pd in &c. *And furr* That in case deflt shall be made in paymt of the sd annty at any time during the lives &c. or in case the sd messe &c. shall happen to be uninhabited and not tenanted by the space of Then and so often and in either of the sd cases it shall and may be lful to and for the sd (*grantee*) his &c. by mortge of the sd messe &c. or orwise to raise so much money as shall be sufficient to pay and discharge all arrears of the sd annty and also all costs dams chas and exps to be from time to time occasioned by such non-payment thof And the sd (*grantor*) doth hby direct the present and all future tenants of the sd hby assd preses to pay to the said (*grantee*) his exs &c. during the lives &c. so much of their respive rents of the sd preses when the same shall become paye as shall be sufficient to pay and satisfy to him and them the sd annty or &c. of £ togr with all costs and chas which shall or may happen by reason of the non-paymt thof in manner afd and that the rects of him the sd (*grantee*) shall be as good and sufficient dischas to the sd tenants as if the same had been actually pd to him the sd (*grantor*) his exs &c. *Provided always* and it is hby decld and agrd by and betn the sd pties hereto That if the sd (*grantor*) his exs &c.

ss or any of them shall and do well and truly pay or cause
 e, paid unto him the sd (*grantee*) his &c. during the lives &c.
 the life of &c. the sd annty or &c. on the &c. and also upon
 death of the survor of them the sd (*nominees*) all arrears of
 sd annty up to the day of the death of the sd survor &c. that
 the agrmt hby made and evy article and thing hin con-
 ed shall from henceforth cease determine and be utterly void
 of no effect and that then also the sd bond of even date
 ewith shall be delivered up to be cancelled any thing herein
 td to the contrary notwithstanding And the sd (*grantor*) Covenants.
 himself &c. doth covt &c. in manner following &c. That he
 ll &c. [pay annty &c. see GRANT (FREEHOLDS)] And also
 ll and will pay the ground-rent of £ so reserved and paye
 the sd messe &c. and preses as afd as also all or. taxes and
 ies touching the same and shall save harmless and keep in-
 nified the sd (*grantee*) his exs &c. of and from the same
 d furr That the sd (*grantor*) his &c. at his and their own
 per costs and chas shall and will from time to time and at
 times during the lives of &c. and the life of &c. insure and
 p insured the sd hby assd preses &c. And in case the sd
 ses shall happen to be destroyed by fire or orwise that then
 sd (*grantor*) his exs ads or ass shall and will forthwith lay
 t all such mos insured or to be insured on the sd preses in
 rebuilding and making good all the dams so happening as
 And furr That he the sd (*grantor*) hath done no act to
 umber &c. [see ASSIGNMENTS (LEASE)] And that it shall and
 y be lful to and for the sd (*grantee*) his exs &c. during &c.
 m and immly after any deft or breach in payment of the sd
 ty &c. contrary to the true meaning of the sd bond and these
 sts to enter upon the sd hby assd messe &c. and to rece and
 e the rents issues and profits thof to his and their own use
 l bent until such time as he and they shall be fully pd all
 arrears of the sd annty and all costs and chas touching the
 ne in manner as afd and that witht any let &c. (also for furr
 urance &c. see ASSIGNMENT OF LEASE) In witness &c. see
 e, No. XLVI.

No.
 LXXXVIII.
 Secured on
 Leaseholds.

upon payment
 of annuity.



No. LXXXIX.

Secured on
Leaseholds in
Trust.

No. LXXXIX.

*Grant of an Annuity and Declaration of Trust of Leaseholds
for securing the same charged on Lives.*

Recital of lease. *This Indre made &c. see ante, No. LXXXV. Betn (grantor) of &c. of the first pt (grantee) of &c. of the second pt and (trustee) of &c. pty hto of the third pt Whas (recital of lease, see ante, No. LXXXVII.) And whas by Indre bearing date on or about the day of last past and expssd to be made betn sd (grantor) of the first pt and W. B. of &c. of the second pt and T. Y. of &c. of the third pt the preses hnbefe mentd and comprised in the sd in pt recited indre of lease were assd to the sd W. B. for the purpe of securing to the sd W. B. his exs ads and ass an annty or yrly sum of £ for the lives of the sevl psns on or at the days and times thin mentd And whas by indre bearing date &c. and made or expssd to be made betn the sd W. B. of the first pt the sd T. Y. of the second pt the sd (grantor) of the third pt and the sd H. W. of the fourth pt the sd annty or &c. of £ was duly reld and the sd preses were duly exonerated and discharged from the same and the sd preses were also assd by the sd T. Y. to the sd H. W. for the then residue of the sd term of yrs but nevss In Trust for the sd (grantor) his exs ads and ass And whas the sd (grantor) hath contracted with the sd (grantee) to grant to him a clear annty or yrly sum of £ for the term of ninety-nine yrs if the sd (grantee) or A. his wife or either of them shd so long live And the true and boná fide conson (a) to be advanced and given for the sd annty is the sum of £ And whas for the better securing the paymt of the sd annty &c. of £ the sd (grantor) hath by a writing under his liand and seal bearing even date with these prests authorized C. C. and A. W. atties of her Maj. Ct. of Q. B. at West jtlly and sevly and any or. atty of the same Ct by confession or orwise to suffer judgmt to be entd up agst him in the sd Ct in an action of debt for money borrowed at the suit of the sd (grantee) his exs ads or ass for the sum of £ and costs of suit And judgmt*

Recital of former grant of annuity.

Recital of re-purchase.

Recital of an agreement to grant annuity.

Recital of warrant of attorney.

(a) As to the necessity of the consideration being boná fide, see post, MEMORIALS.

is to be forthwith entd up agst the sd W. H. under the authty of the sd warrant of atty *And whas* upon the treaty for the purchase of sd annty or &c. of £ it was agrd that the same should

No. LXXXIX.
Secured on
Leaseholds in
Trust.

be secured by the covts trusts and provos hnfter mentd and that the sd annty might be repurchased upon the terms expssd in the agrt hnaft inserted in that behalf and that the costs and chas of preparing and perfecting the sevl secties for paymt of the sd annty and of preparing and filing a memorial thof shd be borne and pd by the sd (*grantor*) *Now this Indre witnesseth* that in pursuance of the sd agrt and in conson of the sum of £ in notes (a) of the Gov and Compy of the Bk of Engld well and truly pd by the sd (T.) as the agent of the sd (*grantee*) the receipt &c. (see *ante*, No. LXXXV.) He the sd (*grantor*) for himself his hrs exs ads and ass doth covt and agree with the sd (*grantee*) his exs ads and ass that he the sd &c. shall and will from time to time and at all times during the sd term of ninety-nine yrs to be computed from the day of the date of these prests if the sd (*grantee*) or A. his wife or either of them shd so long live well and truly pay or cause &c. (see *ante*, No. LXXXV.) and in case the sd (*grantee*) or A. his wife or the survivor of them shall die during the sd term of ninety-nine yrs and betn and in the interval of any two of the sd quarterly days of paymnt and either before or after the sd day of next Then that the sd (*grantor*) shall or will immly after the dece of such survor as afl and demand made thof pay &c. unto the exs ads or ass of the sd (*grantee*) such pt of the sd annty as shall be in proportion to the time or number of days which (exclusive of the day of the dece of the survor of them the sd (*grantor*) and A. his wife) shall have elapsed prior to his dece and after the day of paymt and immly preceding that event or as the case shall require next after the day of the date of these prests.

Terms of agreement.

Testatum.

Covenant to pay annuity.

And this Indre also witnesseth That for the better and more effectually securing the paymt of the sd annty or &c. of £ and for the conson hnbefe expssd it is hby decld and agrd betn the sd pties hto and the sd (*grantor*) doth hby direct and appt and the sd (T.) doth hby consent and agree that he the sd (T.) his

Further testamentum.

(a) As to the mode of paying the consideration under the Annuity Act, see Dig. p. ii. tit. ANNUITIES.

No. LXXXIX. *Secured on Leaseholds in Trust.* exs ads and ass shall stand and be possed of the sd messes or tents preses or heredts so assd to him by the sd hnbefe recited indre upon the trusts following that is to say—

Trusts.

To pay rent:

To insure buildings.

To reimburse himself.

To levy arrears of annuity.

To suffer grantor to take rents in the meantime.

In case of non-payment of annuity for six months, to make sale of premises.

Upon Trust that he the sd (*T.*) his exs ads or ass do and shall from time to time by and out of the rents and prfts of the sd preses pay the rent reserved by the sd hnbefe indre of lease or any under-lease of the sd preses when and as the same shall become due and also do and shall if he or they shall think fit insure or cause the sd messes &c. to be insured agst loss or damage by fire in such sum or sums of money as by him or them shall be thought proper *And* do and shall from time to time apply the money which shall be recd on acct of any such insurance in rebuilding or repairing such pt or pts as shall have been destrdy or damd by fire *And* also do and shall from time to time retain or pay unto or for himself or themselves all and evy such sum or sums of money as he or they shall lay out and spend for the taxes or repairs of the sd preses or orwise relating thto *And* subject and witht prejudice to the trusts hnbefe decld do and shall in case and as often as the sd annty of £ or any quarterly paymt thof shall be in arrear and unpd in the whole or in pt by the space of forty days next after any one of the days or times hnbefe apptd for the paymt thof by and out of the rents and prfts of the sd preses or by bringing actions agst or making distresses upon all or any of the present or future tenants of the sd preses for the recry of the rents in arrear or by any one or more of the sd ways or any or. lful and reasone ways and means whatsr levy and raise such arrears of the sd annty &c. of £ as from time to time shall become due and remain unpd togr with such costs chas and exps as be the sd (*T.*) his exs &c. or the sd (*grantee*) shall incur sustain or be put unto by reason of the non-paymt of the sd annty of £ or any pt thof

And subject and witht prejudice as afd do and shall permit and suffer the sd (*grantor*) his exs ads and ass to rece and take the rents and prfts of the sd preses to and for his and their own use and bent *And* in case the sd annty &c. of £ shall be in arrear or unpd by the space of six cal mths next after any one of the days or times hnbefe apptd for the paymt of the same it shall and may be lful for the sd (*T.*) his exs &c. upon

y request in writing of the sd (*grantee*) his exs ads or ass to
 like sale and absolutely dispose of the sd messes &c. or any
 thof by public auction or private contract or ptly by public
 ction and ptly by private contract as he or they shall think
 and to assign and assure the same when sold unto the pur-
 aser or purchasers thof his her or their exs &c. And do and
 all by with and out of the mos which shall arise by or from
 ch sale or sales resply In the first place retain and pay unto
 d for himself &c. the costs &c. attending the exon of the
 usts reposed in him or them and in the next place do &c. pay
 c. unto (*grantee*) his exs &c. the arrears of the sd annuity &c.
 £ which shall then remain unpaid. And do and shall
 invest the residue of such mos in the name or names of the sd
 T.) his exs &c. in the purchase of Three per cent. Consol. Bk
 annuities and stand and be possed of the same and the divds
 at and income thof in trust by and out of the same or a com-
 petent pt thof to pay unto the sd (*grantee*) his exs &c. the sd
 annty &c. of £ and the proportione pt thof when and as the
 same shall become due and paye and the costs &c. attending the
 same and subject to the sd trusts do and shall stand and be
 possed of the sd three per cent &c. *Upon trust* for the sd
 (*grantor*) his exs ads and ass And it is hby furr agrd and
 decld that after the determination of the sd annty of £
 and full payment of the same and all arrears and such propor-
 tione pt thof and also of all such costs &c. the sd preses so assd
 to the sd (T.) or such pt thof as shall not be sold shall be in
 trust for the sd (*grantor*) his exs &c. And it is hby furr decld
 and agrd that the psn or psns who shall pay any pt of the rents
 and annual prfts of the sd messes or tents and preses or who
 shall become the purchaser or purchasers of any pt thof or
 otherwise pursuant to the trusts hnbefe decld concerning the same
 shall not be obliged or required to see to the applcon of the sd
 rents prfts and mos resply or any pt thof nor whether such sale
 or sales is or are necssy for all or any of the purps afd nor be
 answe or accte for the misapplicon or nonapplicon of the same
 and that all the rects which shall be given by the sd (T.) his
 exs ads or ass of all or any of the sd rents &c. resply shall be
 good and sufficient dischas for the sums of money which by the

No. LXXXIX.
*Secured on
 Leaseholds in
 Trust.*

Upon trust to
 pay arrears,
 &c.

and invest the
 residue.

Declaration as
 to persons pay-
 ing rents, &c.

Receipts of
 trustee to be
 good discharges.

No. LXXXIX. sd rectx shall be ackngd or expssd to have been recd And it is hby furr decld and agrd and the sd (*grantor*) for himself his hrs &c. (Covenants for title &c. see *ante*, No. LXXXV.)

*Secured on
Leaseholds in
Trust.*



No. XC.

*Secured on
Money in the
Funds.*

No. XC.

Grant of an Annuity secured on Money in the Funds.

Obs. By the 53 G. 3, c. 141, s. 10, if the stock be not actually transferred for the purpose of securing the annuity, but be standing in the names of trustees under a marriage settlement, or a will and the like, an inolment of the memorial will not be required.

Recital of will. *This Indre* made &c. see *ante*, No. LXXXV. Betn (*grantor*) of &c. of the one pt and (*grantee*) of &c. of the or. pt *Whas* (a) A. B. by his last will and testament duly exted and attested bearing date &c. did among or. things devise and bequeath unto (*trustees*) their exs ads and ass certain estes thin parlarly described *Upon Trust* That they the sd (*trustees*) shd as soon as convenient after his dece sell and dispose of the same for the best price that could be obtained and he did direct that the money to arise from the sale of such estes should be laid out and invested in some one or more of the public funds and that the annual int divds and produce shd from time to time accumulate until the sd (*grantor*) his grandson shd attain the age of twenty-one *And then* the sd (*trustees*) shd pay unto the sd (*grantor*) his grandson the whole int divds and income of the sd estes and all the increments accumulations and improvements

(a) If the estate be created by a settlement, then, instead of the above recital, say, " *Whas* in and by a certain indre bearing date &c. and made betn &c. purporting to be a settlement made on the marre then intended and which *aftrw* took effect the sum of £ Three per cent. Bk Annuities of (*grantor*) and C. D. his now wife was transferred into the names of the sd (*trustees*) in the bks of the Govr and Compy of the Bk of Engld *Upon trust* that they the sd (*trustees*) and the survors and survor of them and the exs &c. of such survor shd pay and apply the int divds and proceeds thof as the same shd from time to time become ~~due~~ and paye from and after the sd marre unto the sd (*grantor*) and his ass during the term of his natural life or orwise permit and empower him to rece the same to and for his and their bent *And* from and immly after his dece *Upon trust* to pay and apply the same in the manner therein expsd."

thof during the natural life of the sd (*grantor*) to and for his own use and bent *And whas* the sd (*testator*) departed this life on or about the day of in the year 18 witht No. XC. Secured on Money in the Funds.

revoking or altering the sd bequest to him the sd (*grantor*) and the sd (*trustees*) duly proved his sd will in the Court &c. Death of testator and probate of will.

And whas the sd (*grantor*) attained his age of twenty-one yrs on or about &c. and thereupon became intituled to the int divds and produce of the sd annual sum of £ *And whas (recite contract for purchase, see ante, No. LXXXV.) And whas* upon the treaty for the purchase of the sd annty or &c. of £

it was agreed that for the more effectually securing the paymt thof unto the sd (*grantee*) his exs ads or ass he the sd (*grantor*) shd grant and assign unto the sd (*grantee*) all the present and future int divds and produce of the sd sum of £ so given and devised to the sd (*grantor*) during the term of his natural life *Now &c. (see ante, No. LXXXV.) And this Indenture further witnesseth* That in conson of the preses *He* the sd (*grantor*) *Hath* granted bargained &c. (see *post*, ASSIGNMENTS) Grant of interest and dividends,

and by these prests *Doth* grant &c. unto the sd (*grantee*) and his ass *All* and evy the ints divids and produce now accruing and arising and from time to time to accrue and arise during the natural life of the sd (*grantor*) *To Have and to Hold* receive perceive take and enjoy the sd int divds and profits and all advantage and bent therefrom unto the sd (*grantee*) his exs ads and ass *Upon* the trusts nevss and under and subject to the provos declons and agrts hnaft expssd and decld of and concerning the same that is to say *Upon Trust* That he the sd (*grantee*) his exs ads and ass shall and do by with and out of the int divds and produce hby assd or intended so to be yrly and evy yr during the life of the sd (*grantor*) pay the sd annty or clear yrly sum of £ and a proportional pt thof as afd at or on the days or times and in the manner hnbefe appointed for paymt of the same *And* in the next place shall and do pay upon trusts,

and reimburse himself all costs chas and exps which the sd (*grantee*) his exs ads or ass shall sustain or be put unto by reason or means of the nonpaymt of the same or any pt thof *And lastly* shall and do pay the residue of the sd int divds and produce to the sd (*grantor*) his exs ads or ass for his and their own use and bent *And* it is hby decld and agrd by and betn residue to the grantor.

Power of attorney.

No. XC.
Secured on
Money in the
Funds.

Covenant that
grantor is
intitled to the
interest and
dividends;

to appear at
an insurance
office.

Repurchase.

the pties to these prests and the sd (*grantor*) in particular doth hby authorize and empower the sd (*grantee*) his exs ads and ass from time to time during the continuance of this security to ask demand recover and rece of and from the sd (*T.*) or the trustees for the time being the sd int divds and produce of the sd sum of £ and evy pt thof and upon rect thof or of any pt thof rectx releases acquittances and dischas from time to time to make and give for the same either in the name or names of him the sd (*grantee*) his exs ads or ass or in the name of the sd (*grantor*) and upon the nonpaymt thof or of any pt thof in the name or names of the sd (*grantor*) his exs &c. to have take exercise commence carry on and prosecute all such powers remedies ways and means whatsr for recovering of the same as fully as he the sd (*grantor*) might or could personally do in that behalf in case these prests had not been made he the sd (*grantor*) hby constituting and appointing the sd (*grantee*) his exs ads and ass his true and lful atty and atties for that purpose with power to substitute depute or appt under him or them any or. psn or psns for the same ends and purps and also hby confirming and ratifying and agreeing to confirm and ratify all that the sd atty and atties shall lfully do or cause to be done in and about the preses And the sd (*grantor*) for himself &c. doth covt &c. that is to say That he the sd (*grantor*) now at the time of making and sealing these prests is in the rect and enjoymt of and well intitled to the sd int divds and produce and that he hath not at any time or times heretofore made done or committed any act deed grant assignment matter or thing whatsr whereby or wherewith the sd divds and produce hby assd or intended so to be is are can shall or may be in anywise chagd incumbered or orwise prejudicially affected And that he the sd (*grantor*) shall and will &c. [appear at an insurance office See GRANT (FREEHOLDS.)] *Provided always* and it is hby decl'd and agrd by and betn the pties to these prests and parlarly the sd (*grantee*) for himself &c. [*proviso for repurchase. See ante, No. LXXXV. GRANT (FREEHOLDS.)*] *In witness &c. see ante, No. LXXXV.*



No. XCI.

No. XCI.
Secured on a
Benefice.

Grant of an Annuity secured on a Benefice.

Us. By the 13 Eliz. c. 20, repealed by the 43 G. 3, c. 8, but re-
d by the 57 G. 3, c. 99, all chargings of benefices with a cure
any pension, or with any profit out of the same to be yielded
ken, other than rents to be reserved upon leases, are made void;
it has since been held, that a demise for securing an annuity is
under this statute; *Shaw v. Pritchard*, 10 B. & C. 241; but
covenants in the annuity deed may be good although the rest is
, and payment of the arrears under these covenants may be en-
d by a warrant of attorney, *Gibbons v. Hooper*, 2 B. & Ad. 734.

his Indre &c. *Whas* the sd (*grantor*) is rector (or "vicar") Recitals of
seisin ;
ie parish church of &c. in the co. of within the diocese
and in right thof was seised of or orwise intituled to the
e lands togr with all and singr the tithes or tenths rents
rings and oblations and or. appts to the same rectory or par-
age belonging or appertaining *And whas (recital of contract* of contract &c.
i and warrant of atty, see *Grant on Freeholds*) Now &c.
onson &c. he the sd (*grantor*) Hath granted &c. one annnty Testatum.
lear yrly sum of £ charged and chargeable upon &c. *All*
the sd rectory and parish church of *And also* upon
the messes or tents glebe lds tithes tenths oblations obven-
s offerings portions prfts emoluments rights members and
is whasr thereunto belonging *To Have Hold* take &c. *And* Habendum.
Indenture furr witnesseth That &c. for the more effectually
ring and enforcing payment of the sd annties and in conson
he preses and also of 5s. &c. (demise to trustee of the rectory
e lands tithes &c. for the term of 99 yrs if the sd (*grantor*)
so long live *And it is lby decl'd &c. (power of attorney to*
tee to receive and recover the rents issue and profits of the
rectory, see last Precedent) *And the sd (grantor) for &c.*
it to pay annnty, that he has good right to charge the sd rec-
&c. for quiet enjoyment &c. also a clause to repurchase, see
ant of an Annuity secured on Freeholds) *In witness &c. see*
e, No. XLVI.

Grant of an Annuity by way of Further Charge, see post,
FURTHER CHARGE.

*Conveyance by a Vendor to a Purchaser, in Consideration of
an Annuity secured to Vendor for Life, see post, PURCHASERS.*

ASSIGNMENTS OF ANNUITIES.

- | | | |
|-------------------------------------|--|------------------|
| 1. <i>An Annuity is assignable.</i> | | 3. <i>Stamp.</i> |
| 2. <i>Need not be inrolled.</i> | | |

An annuity is
assignable.

SECT. 1. It was formerly doubted whether an annuity was assignable though assigns were named in the grant (Perk. s. 101), it being considered a mere personal contract, and consequently a *chose in action*, 2 Vin. Abr. 515; but this objection was afterwards overruled, Hetl. 80. It seems, too, that naming the assigns is not essential to the making an annuity assignable, 7 Co. 28, b; Harg Co. Litt. 144, b. An annuity, however, being in the nature of a *chose in action*, a power of attorney is usually given to sue in the name of the assignor for recovery of the arrears.

Need not be in-
rolled.

2. The memorial of an annuity being once inrolled, need not on assignment to be inrolled again, *Dixon v. Birch*, 2 H. Bl. 307.

Stamp.

3. An assignment of an annuity requires an *ad valorem* stamp on the consideration money.

No. XCII.
Assignment.

No. XCII.

Assignment of an Annuity.

Recital of grant
of annuity.

This Indre &c. see ASSIGNMENTS Betn (assignor) of &c. of the first part (trustee of term) of &c. of the second part (assignee) of &c. of the third part and (new trustee of term) of &c. of the fourth part Whas by an indre bearing date &c. and made betn (grantor) thin described of the first pt (trustee of the term) also thin described of the second pt and sd (assignor) of the

for the consons thin mentd the sd (*grantor*) did give and confirm unto the sd (*assignor*) one annuity or clear of £ free from all deductions whatsr to be chagd gble upon and issuing out of all those the messes lds and heredit &c. *To Hold* the sd annty and evy pt thof sd (*assignor*) his exs ads and ass thenceforth for and the natural life of the sd (*grantor*) and a proportional f to be pd on or at the days and times and in the manner now reciting indre mentd for paymt of the same with the powers of distress and entry for recovering and enforcing hof And by the now reciting indre the sd (*grantor*) nomination and by the direction and apptmt of the sd) did grant unto the sd (*old trustee*) his exs ads and ass e &c. hnbefe described and by the now reciting indre ith the sd annty of £ and evy pt thof with the appts l the same unto the sd (*T.*) his exs ads and ass from next before the day of the date of the now reciting and during and unto the full end and term of yrs ext ensuing and fully to be complete and ended if the tor) shd so long live Upon the trusts thin expssd and and concerning the same And by the now reciting was also agreed that the sd (*grantor*) shd be at liberty ime thereafter to repurchase the sd annty at the price he terms thin mentd And whas the paymt of the sd as furr secured by a judgt confessed in her Majesty's by virtue of a warrant of attorney from the (*grantor*) purpose Whas the sd (*assignor*) did effect an insurance office of on the life of the sd (*grantor*) for the £ to be pd to the sd (*assignor*) or his exs on the the sd (*grantor*) in conson of the annual premium of And whas the sd (*assignee*) hath contracted and agreed sd (*assignor*) for the absolute purchase to him of the or yrly sum of £ Now this Indre witnesseth That unce of the sd agrt and in conson of the sum of £) to the sd (*assignor*) in &c. paid by &c. the rect whof the sd (*assignor*) Hath bargained sold assigned trans-

No. XCII.
Assignment.

Warrant of at-
torney.

Insurance.

Testatum.

he general precedent before given of an annuity deed (see *ante*, No. all is given fully which is here only briefly referred to.

Vol. VIII.
Assignment.

Habendum.

Further testa-
tum.

Assignment by
one trustee to
another.

ferred &c. and by &c. each bargain &c. unto the sd (assignee) his exs ads and ass *All that* the sd annuity of £ in and by the sd in pt recited indre granted secured and made paye unto the sd assignor his exs ads and ass as hnbefe mentd and all arrears thof and all and evy sum and sums of money to become due and paye for and on acct of the sd annuity &c. And all the right title interest trust property possn claim and demand whater both at law and in equity of him the said (assignor) of in to or out of the same annuity and preses and evy pt thof Togr with all remedies and powers in and by the sd in pt recited indre given for recovering and receiving the same *And also* the judgment entered upon the sd warrant of attorney *And also* the sd policy of insurance and all and evy sum and sums of money secured or recoverable thon *To Have and to Hold* rece and enjoy the same annuity &c. and all arrears and growing paymts thof Togr with the sd powers and remedies and means for enforcing the same and the sd judgment and policy of insurance and all and singr or. the preses hby assd unto the sd (assignee) his exs ads and ass from the day of now last past during the natural life of the sd (grantor) as fully absolutely and beneficially to all intents and purps whater as he the sd (assignor) might have held and enjoyed them if these prests had not been made *And it is* &c. (Power of Attorney, see *last Precedents*) *And this Indenture further witnesseth* That for the consons afd and also in conson of &c. to the sd (assignor's trustee) in &c. pd by the sd (assignee's trustee) &c. *He* the (assignor's T.) by the direction of the sd (assignor) and at the request and nomination of the sd (assignee) testified by their severally being pties to and executing these prests *Hath* bargained sold &c. and by &c. And the sd (assignor) at the like request and apptmt of the sd (assignee) *Hath* ratified and confirmed and by these prests *Doth* &c. unto the sd (assignee's trustee) his exs ads and ass *All those* the sd messes and tents lands and heredts &c. in and by the sd in pt recited indre demised unto the said (assignor's T.) his exs &c. And all the este right title int term and terms of yrs &c. claim and demand whater &c. of him the sd (assignor's T.) and (assignor) or either of them of in to or out of the same *To Have* &c. the messes and tents lds heredts and all and singr or. the prekes hby assigned or orwise assured or intended so to be and

pt thof with the appts unto the sd (*assignor's T.*) his exs
 and ass henceforth for and during all the residue and remdr
 the sd term of yrs now to come and unexpired *Upon*
 trusts nevss and to and for the ends intents and purps in or
 the sd indre decld or expssd concerning the same and in
 h manner that all the bent and advantage of the same trusts
 favour of the sd (*assignor*) his exs ads and ass shall hence-
 th belong to and be reced and enjoyed by the sd (*assignee*)
 exs ads and ass according to the true intent and meaning of
 se prests (a) *And* the sd (*assignor's T.*) for himself his exs
 and ass doth hby covt and declare to and with the sd (*as-*
signee's T.) his exs ads and ass by these prests That he the sd
signor's T.) hath not at any time heretofore made done exted
 mitted or knowingly or wilfully suffered any act matter or
 ng whatsr whereby or by reason or means whof the sd messes
 d tents lands and herdts hby assd or orwise assured or in-
 ded so to be or the term of yrs thin or any pt thof are
 can shall or may be impeached charged incumbered or pre-
 ficially affected in any way whatsr *And* the sd (*assignor*)
 r himself his hrs exs and ads doth covt promise and agree
 th and to the sd (*assignee*) his exs ads and ass That for and
 twithstanding any act deed matter or thing by him the sd
signor) made done committed or knowingly suffered to the
 strary the sd annty &c. of £ is now subsisting and unre-
 med and good and valid both in equity and at law and also
 e sevl secties given for the same are now in force *And* that
 the sd (*assignor*) hath at the time of exting these prests good

No. XCII.
Assignment.

Declaration of
trusts.

Covenant by
the old trustee
that he hath
done no act to
incumber.

Covenants from
assignor.

Annuity sub-
sisting, good
right to assign.

(e) If, instead of assigning the term to a new trustee, the old trustee be con-
 veyed, omit the further testatum, and say " And it is hby decld and agrd by and
 to the pties to these prests and parlarly the sd (*T.*) at the request and instance
 the sd (*assignor*) doth hby for himself his hrs exs ads and ass covt and agree
 th and to the sd (*assignee*) his exs ads and ass That he the sd (*T.*) his exs ads
 d ass shall and will from time to time and at all times hrafr during the con-
 nuance of the sd term of yrs stand possessed of and be interested in the
 messes and tents lnds and herdts subject as afd *Upon the trusts* and to and
 the ends intents and purposes expressed and decld of and concerning the
 ne nevss so and in such manner that all bent and advantage of the same trusts
 favour of the sd (*assignor*) his exs ads and ass shall henceforth belong to aud
 recd and enjoyed by the sd (*assignee*) his exs ads and ass *And* the sd (*T.*)
 h hby &c. (*covenant that he has done no act to incumber, as above.*)

No. XCII.
Assignment.

No act to en-
cumber.

Farther assu-
rance.

right and full power and authority to bargain sell and ass the sd annty and or. the preses hby assd or orwise assured or intended so to be in manner afd *And furr* that he the sd (*assignor*) hath not at any time heretofore done or knowingly or willingly suffered nor shall nor will make do or suffer any act deed matter or thing whatsr whby or by reason whof the sd annty or any pt thof or any of the preses hby assd or orwise assured or intended so to be are is can or may be impeached chagd incumbered or in anywise prejudicially affected or the sd warrant of atty and policy of insurance or either of them are is can or may be in any way assigned satisfied released vacated or extinguished in consequence of which the sd (*assignee*) shall may or can be prevented or hindered from receiving or taking the sd annty or &c. of £ or any pt thof as and when the same from time to time shall become due and paye *And* that he the sd (*assignor*) his exs ads and ass shall and will from time to time at the rease request and at the costs and chas of the sd (*assignee*) his exs &c. make do and exte all and evy such furr and or. lful and rease acts deeds assnmts and assurances in the law whatsr for the furr better more perfectly and absolutely assigning and assurg the sd annty or &c. of £ in such manner and form as by the sd (*assignee*) his exs &c. or his or their counsel in the law shall be reasonably advised devised or required provided that the psn or psns required to make the same shall not be compelled or compellable to go or travel from his or their respective places of abode for the doing thof *In witness &c. see ante*, No. XLVI.

MEMORIALS OF ANNUITY DEEDS.

- | | |
|---|--|
| <p>1. <i>Memorial of Deed to be inrolled.</i>
2. <i>Requisites of the Memorial.</i>
 <i>First, as to the Date.</i>
 <i>Secondly, as to the Instrument.</i>
 <i>Thirdly, as to the Estate on which</i>
 <i>the Annuity is charged.</i></p> | <p><i>Fourthly, as to the Name.</i>
<i>Fifthly, as to the Names of the Wit-</i>
 <i>nesses.</i>
<i>Sixthly, as to the Consideration.</i>
<i>Seventhly, when void.</i>
3. <i>Stamp Duty on the Memorial.</i></p> |
|---|--|

Memorial of
deed to be in-
rolled.

SECT. 1. By the 53 G. 3, c. 141, ss. 2, 3, which repealed the 17 G. 3, a memorial of every deed, bond, instrument, or other assurance

ereby any annuity or rent-charge shall be granted for one or more or lives, within thirty days, shall be inrolled in Chancery. Such memorial to contain the date of the deed, the names of all the parties, of all the witnesses, and to set forth the annual sum to be paid, name of the person for whose life the annuity is granted, as also name of the person or persons by whom the annuity is to be beneficially received, otherwise every such deed and assurance shall be void, the pecuniary consideration for granting the same, and the annual sum or sums to be paid, in the form or to the effect following.

Memorial.

Name of Instrument.	Nature of Instrument.	Names of Parties.	Names of Witnesses.	Name or Names of Person or Persons by whom Annuity or Rent-charge to be beneficially received.	Person or Persons for whose Life or Lives Annuity or Rent-charge is granted.	Consideration, and how paid.	Amount of Annuity or Rent-charge.
10 eg. 1.	Indenture of Release.	A. B. of one part, C. D. of the other part.	E. F. of G. H. of	C. D.	A. B.	100 <i>l.</i> paid in money, and 500 <i>l.</i> paid in notes of the Governor and Company of the Bank of England (or other notes, or bills of exchange, as the case may be.)	100 <i>l.</i> a-year.
same note.	Bond in Penalty of £ .	A. B. to C. D.	E. F. G. H.				
same	Warrant of Attorney to confess judgment on the same bond.	A. B. to I. K. and L. M. Attornies of the Court of King's Bench.	E. F. G. H.	} For securing the same Annuity or Rent-charge.			

The 3 G. 4, c. 92, and 7 G. 4, c. 75, serve to explain some doubtful points in the 53 G. 3.

2. In the construction of these Acts as to the requisites of the memorial, it has been held—

Requisites of the memorial.

First, *as to the date*, That the memorial of every instrument, by which an annuity is secured must contain the date of each instrument, 2 H. Bl. 13; but where an indenture is described, "as bearing date with a bond," the date of which is set forth, it is sufficient, *Wason v. Phillips*, 5 M. & S. 369.

Secondly, *as to the instrument*. A bond given as a collateral security must be memorialized, *Rosher v. Hurdis*, 5 T. R. 678; and if be joint and several, it is not sufficient to describe it as several only, *Wiley v. Canthorne*, 1 East, 398. Also the warrant of attorney to secure an annuity must be included in the memorial, *Hopkins v. Waller*, T. R. 463.

Memorial.

Thirdly, *as to the estate on which the annuity is charged.* The nature of the estate and the interest the grantor has in it, must be specified in the memorial, *Bradford v. Burland*, 14 E. 446. So where there are trusts which are created in consequence of the annuity, they must be stated, not in general terms, *Taylor v. Johnson*, 8 T. R. 184; nor by the words "Upon the trusts therein mentioned," *Dolman v. Dolman*, 5 T. R. 641. But the clause for redemption, which was held to be necessary under the 17 G. 3, is not required by the 53 G. 3, c. 141; *Fems v. Smith*, 3 B. & A. 206.

Fourthly, *as to the names of the parties.* The name of the person actually paying the consideration money must be given, when it is paid on account of another, *Dalmer v. Barnard*, 7 T. R. 248.

Fifthly, *as to the names of the witnesses.* The description of the witnesses was required under the two first Acts to be accurately set forth, *Darwin v. Lincoln*, 5 B. & A. 444; but the 3 G. 4, c. 92, declares, that no further description of the witnesses is necessary than the naming them, *St. John v. Champneys*, 1 Bing. 77. And by the 2 G. 4, c. 75, it is provided, that no further or other names of witnesses are required in the memorial besides the names of such witnesses as shall appear signed to their respective attestations of the execution of the other instruments.

Sixthly, *as to the consideration.* An annuity granted in consideration of relinquishing a business or a school, or in consideration of anything but money, does not require to be memorialized, *Crespigny v. Wittenoon*, 4 T. R. 790; *Hutton v. Lexis*, 5 T. R. 639. The consideration must be truly set forth in the memorial, *Washburn v. Birch*, 5 T. R. 472; *Watts v. Millard*, ib. 598; also the mode of payment, *Vaux v. Ansell*, 1 B. & P. 224; *Wright v. Read*, 3 T. R. 554. But where there are several deeds for securing an annuity, the consideration need not be repeated in them all, *Hodges v. Money*, 4 T. R. 500, provided there be words of reference in the deeds not containing the consideration, to shew that they are all connected, *Saunders v. Hardinge*, 5 T. R. 9.

Seventhly, *when void.* By the two first Acts, the omission to register any of the deeds, rendered the whole transaction not only voidable, but absolutely void; but by the last Act, all deeds inrolled are declared to be valid and effectual, notwithstanding the omission to inrol other deeds for securing the same annuity, see further as to annuities, Dig. p. ii. tit. ANNUITIES.

Stamp duty on the memorial.

3. By the 55 G. 3, c. 184, the memorial of an annuity requires a stamp of 1*l.* and a further progressive duty of 10*s.* for every piece of vellum or parchment after the first on which the memorial is written.

No. XCIII.

No. XCIII.
Memorial of
Grant.

Memorial of Grant of an Annuity by Indenture.

A Memorial to be inrolled pursuant to Act of Parliament of
Indre tripartite being a grant of an annty bearing date the
 day of and made betn (*grantor*) of &c. of the first
 t (*grantee*) of &c. spinster of the second pt and (*trustee*) a
 trustee named by and on the behalf of the sd (*grantee*) of the
 hird pt whby in conson of £ of &c. to the sd (*grantor*) in
 and pd by (a) A. B. for and in behalf of the sd (*grantee*) for
 which a receipt is signed by the sd (*grantor*) on the back of the
 d *Indre* He the sd (*grantor*) did give grant and confirm unto
 he sd (*grantee*) and her ass for and during her natural life one
 unty or yrly rent-charge of £ of &c. to be issuing and paye
 yrly during the life of the sd (*grantee*) out of *All that &c.* To
Hold and enjoy the sd annty of £ unto the sd (*grantee*) and
 her ass during the term of her natural life clear of all taxes and
 deductions whatsr paye quarterly on the days and in manner
 thin mentd *And* for the better securing paymt of the sd annty
 and also in conson of 5s. to the sd (*grantor*) by the sd (T.) He
 the sd (*grantor*) did demise unto the sd (T.) all and singr the
 thnbefe mentd messes or tents lds and preses thby chagd with
 the sd annty *To hold* the sd preses thby demised unto the sd
 (T.) his exs &c. from the day next befe the day of the date thof
 for the term of ninety-nine yrs if the sd (*grantee*) shd so long
 live at the yrly rent of a peppercorn only if lfully demanded
 subject to redemption upon the due paymt of the sd annty to
 the sd (*grantee*) in manner thin mentd The exon of which indre
 whof this is a memorial is witnessed by (b) F. I. of in the
 co. of gent. and I. C. of in the co. of gent.

(a) As to the mode of payment, see sect. 2.

(b) As to naming of witnesses, see sect. 2.



No. XCIV.
*Memorial of
 Bond, &c.*

No. XCIV.

*Of a Bond and Warrant of Attorney for securing the Payment
 of the same Annuity.*

Also of a bond (a) or obligation bearing even date with the above-mentioned indre from the sd (*grantor*) to the sd (*grantee*) in the penal sum of £ with a condon thereunder written for making void the same upon payment by the sd (*grantor*) unto the sd (*grantee*) at the times and in manner in the above indre mentd The exon of which bond is witnessed by J. H. of &c. in the co. of

And of a (a) warrant of attorney bearing date the same day of exted by the sd (*grantor*) directed to certain atties therein named empowering them to enter up judgment on the above-mentd bond at the suit of the sd (*grantee*) in her Maj. Ct. of Q. B. at Westminster The exon of which warrant of atty by the sd (*grantor*) is also witnessed by the sd J. H.



No. XCV.
*Release of an
 Annuity.*

No. XCV.

Release of an Annuity on a Repurchase.

Recitals.

Annuity still
 subsisting.

Testatum.

This Indre made &c. see *ante*, No. LXXXV. *Grant of an Annuity* Betn (*Releasor*) of &c. of the first pt (*Trustee*) a trustee named for and on behalf of (*Releasee*) of &c. of the second pt and (*releasee*) of &c. of the third pt *Whas* by Indre &c. (*recite grant of annty*, see *Assignment of Annuity*.) *And Whas* &c. (*recite warrant of attorney*) *And Whas* the annty is still subsisting and all arrears of the same have been pd up to the day of the date of these prests as the sd (*releasor*) doth hby acknge *And Whas* the sd (*releasee*) hath agrd with the sd (*releasor*) for the repurchase of the sd annty of £ at or for the price or sum of £ and it hath been thereupon agrd that the sd annty and the scties for the same shd be reld and the sd term of nine-nine yrs be surrdrd in manner hnafttr mentd *Now this Indre witnesseth* That in conson of the sum of £ &c. to the sd (*releasor*) in hand pd by the sd (*releasee*) the rect &c. at the in-

(a) As to what instrument must be memorialized, see sect. 2.

tance of the sd (*releasee*) testified by his signing and sealing
 these prests He the sd (*releasor*) Hath remised released ac-
 quitted and for ever quitted claim and by these prests *Doth*
 remise &c. unto the sd (*releasee*) his hrs exs ads and ass *The*
 d annnty secured by the sd in pt hnbefe recited indre and all
 rrears thof and all powers and remedies for recovering and en-
 forcing paymt of the same *And also* the sd judgment entered
 up against the sd (*releasee*) at the suit of the sd (*releasor*) and
 he full bent of the same and all or. secties entered into and
 given for securing the sd annnty *And all the este right &c.* (see
 ASSIGNMENTS) of him the sd (*releasor*) of in to and out of the sd
 annnty or &c. and the sd judgmt and secties and evy pt thof *And*
 the sd (*releasor*) doth hby for himself &c (covt that he has done
 no act to incumber, see ASSIGNMENTS) whby the sd annnty or any
 pt thof after the exon of these prests shall continue or be paye
 on the sd messe &c. or the sd preses be chagd with the same
 annnty or any pt thof *And this Indre further witnesseth* That
 in further pursuance of &c. and in conson of the preses and also
 in conson of 5s. to the sd (*T.*) in hand &c. by the sd (*releasee*)
 &c. the rect &c. *He* the sd (*T.*) at the instance and by the di-
 rection of the sd (*releasor*) testified &c. *Hath* surrendered and
 yielded up remised and released and by &c. doth surrender &c.
All that messe &c. and all and singular or. the preses which by
 the sd hnbefe in pt recited indre were demised to the sd (*T.*) his
 exs &c. for the term &c. determinable as afd *And all the este*
 &c. To the intent that the sd term of nine-nine yrs may be
 merged and extinguished by way of rele of right surrender or
 orwise cease determine and be void to all intents and purps
 whats *And* the sd (*T.*) doth hby covt &c. (*covt by trustee that*
he has done no act to incumber &c.) *In witness &c.* see ante, No.
 XLVI.

No. XCV.
 Release of an
 Annuity.

Further testa-
 tum.

Annuities in Deeds, see INDEX TO PRECEDENTS.

ANTICIPATION.

SECT. 1. By the common law a woman could not have any pro- Separate Pro-
 perty independent of her husband, but equity interposed at an early perty.
 period to give valdity to provisions which were made for the benefit

Anticipation. *of femes covert.* At first this was effected by the aid of trustees; but afterwards a gift as a *feme covert*, without naming trustees, was held to be good. *Harvey v. Harvey*, 1 P. Wms. 125; and afterwards more expressly in the case of *Bennet v. Davis*, 2 P. Wms. 316, where the husband, becoming bankrupt, was made a trustee for the purpose of conveying the estate to a trustee for the separate use of the wife.

Alienations by femes covert. 2. In such cases the power of disposing of her property was left to the woman; but it was afterwards held that a gift to a *feme covert*, coupled with a restriction against alienating it by way of anticipation, was valid, *Hulse v. Tenant*, 1 B. C. C. 16; *Jackson v. Hobhouse*, 2 Mer. 433; but this restriction has been rendered virtually inefficacious by several subsequent decisions, *Jones v. Salter*, 2 Russ. & M. 208; *Barton v. Briscoe*, 1 Jac. 603; *Newton v. Reid*, 4 Sim. 141; *Woodmaston v. Walker*, 2 Russ. & M. 197.

Effect of the Anticipation Clause in respect of male persons.

In respect to males, it has been long clearly settled that no words prohibiting anticipation will be of any avail as against the claims of creditors, unless there be a gift over in case of alienation, *Robinson v. Brandon*, 18 Ves. 435; *Graves v. Dolphin*, 1 Sim. 66; *Green v. Spicer*, 1 Russ. & M. 395; *Lewis v. Lewis*, 6 Sim. 304; *Snodden v. Dale*, 6 Sim. 524. In every case, therefore, where the object is to prevent alienation, this cannot be securely effected otherwise than by framing the anticipation clause so as not only to render the gift void as to the party intended to be benefited, but also to make another disposition of the fund. In *Lewis v. Lewis*, 6 Sim. 304, the terms of the trust were, "That if A. (*the donee*) should at any time, in any manner whatsoever, impede or frustrate the trusts of the will, or interfere therewith, or with the receipt of the rents of the estates thereinbefore directed to be paid to him, then the rents should be no longer paid to him, but that his claim to the same should be forfeited, and that the trustees should thenceforth, for the term of twenty-one years from the testator's decease, invest and accumulate the rents, and stand possessed of the accumulations for the younger children of A.; and after the expiration of the twenty-one years, in case A. should be living, upon trust for the residue of A.'s life, to apply the rents for the benefit of A. and his family, in manner before-mentioned, or again invest the same, so as to accumulate for the benefit of his children, as the trustees should think proper." A. assigned his interest to trustees for the benefit of his creditors, and it was held, that, as the assignment would operate to defeat the trusts of the will, it was void, but that A.'s interest wholly determined, and the rents were thenceforth to be invested for the purpose of accumulation.

APPOINTMENTS.

*Definition.***APPOINTMENTS IN EXECUTION OF A POWER.***Operation of an Appointment in Execution of a Power.**Appointments by Females Covert.**Qualities of an Appointment.**Power of Revocation.**Distributive Appointments.**Relative Appointments.**Statutory Appointment Act, 11 G. 4**and 1 W. 4, c. 46.**Fict of certain Words in Appointments.***8. Stamp Duty on Appointments.****APPOINTMENTS DELEGATING AN AUTHORITY.****9. Delegation of Authority.****10. Naked Authority, by whom exercised.****11. Distinction between a naked Authority and one coupled with an Interest.****12. Delegated Authority, how to be executed.****13. Not to be delegated.**

ACT. 1. An appointment as a deed may be considered in two ways, Definition.
 first as a relative and dependent instrument, springing out of and
 deriving its force from the Statute of Uses; or as an irrelative and
 independent instrument, delegating an authority to one person to act
 in behalf of another, 1 Wood's Conv. 465.

APPOINTMENTS IN EXECUTION OF A POWER.

An appointment, in the first sense of the word, is an instrument Operation of a
 intended for carrying into effect those particular modifications of uses appointment in
 which are denominated powers. Thus, suppose an estate be conveyed execution of a
 to A. and his heirs to the use of B. for life, remainder to such son as power.
 A. shall appoint, and B. appoints to the use of his first son; then
 the law vests in the son by the appointment, and the possession by
 statute, which union of the use and possession constitutes what
 termed the legal estate. The appointment operates not as a con-
 veyance, but as the limitation of the use; the right to make this
 limitation is termed the power; the exercise of the power is termed
 an appointment; the person exercising it the appointor, and the
 person taking under it the appointee, Butler's Co. Litt. 271, b. n.
 An appointment is, therefore, controlled by the pre-existing instru-
 ment on which it is founded; for, in notion of law, any one taking
 virtue of an appointment is considered as taking under the instru-
 ment giving the power; with this restriction, however, that reference
 must be had to the nature of the instruments in construing the vali-
 dity of an appointment. If the power be executed by will, the interest
 of the appointee, who is considered in the light of a devisee, will be

Appointments. ambulatory and revocable like the will itself, and consequently subject to the chance of a lapse, if the appointee die in the lifetime of the appointor, *D. of Marlborough v. Godolphin*, 2 Ves. 61; but if made by any other instrument or deed, not in its nature revocable, the property upon which it attaches will be absolutely vested in the appointee, in like manner as if he had been named in the original conveyance. It follows likewise, from the nature of this instrument, that no limitation in an appointment will be valid, unless it would have been so, if it had been made by the conveyance creating the power. Limitations, therefore, to the unborn children of an unborn child are void, because the law would not permit such a conveyance, as tending to a perpetuity, *Robinson v. Hardcastle*, 2 T. R. 241. As a use cannot be limited upon a use, so as to be executed, by the statute, it follows likewise, from the nature of an appointment, which, as before observed, is a limitation to a use, that it cannot be made immediately to the use of the appointee, but it may be and usually is made upon trust to such purposes as the appointee shall direct; and courts of equity will give efficiency to the instrument where the statute falls short, by compelling the *cestui que use* to comply with the trust as limited, *Wood's Conv.* 460; *But. Co. Litt. ub. sup.*

Appointment,
by *femes covert*.

3. An appointment is applicable, under the sanction of the Court of Chancery, to the disposition of separate property by a *feme covert*, who, though disabled at common law to make a will or regular conveyance, is allowed in equity a disposing power notwithstanding her coverture, and the instrument by which she exercises this power, whether in the shape of a will or otherwise, is considered as taking effect in the nature of an appointment. And in cases where married women are intitled to separate property in the hands of trustees, their appointment will be valid, although the trustees are not parties thereto, *Peacock v. Monk*, 2 Ves. 190; *Rippon v. Dawding*, *Ambl.* 565.

Requisites of an
appointment.

4. In framing a deed of appointment, it is not necessary to refer to or recite the deed creating the power, if it sufficiently appear that the party intend exercising it, 6 Co. 17; *Cro. Eliz.* 877. For this reason, it is usual, in every well-drawn deed of appointment, for the party exercising the power to declare, that he acts not only in exercise of that particular power, but also of every other power enabling him in that behalf. This latter clause is said in some cases to have reached powers that were understood to be extinguished, 1 *Sugd. Pow.* 243, 6th edit. Likewise every incidental circumstance prescribed in the creation of the power ought to be complied with in the instrument by which the power is executed, *ib.* 264. If a writing is

uired, a disposition by parol is not valid, 1 Vern. 340. If a seal required, a writing under hand will not be sufficient. So likewise to signing, attestation, number and quality of witnesses, consent particular persons, giving notice, &c., 1 Sugd. Pow. 294, 6th ed. a deed be expressly required, it cannot be executed by will, *Darwin v. Pulteney*, Cowp. 260; but where a power is given generally, without any restriction as to the mode of execution, as "by any writing or instrument," it may be exercised by deed or will. (*As to appointments in a will*, see WILLS, Pref. sect. 5, and *Abstract of 7* . 4 & 1 Vict. c. 26, *Append. No. XVII.*)

Appointments.

5. A power of appointment includes in itself a power of revocation, though no such authority be expressly reserved in the deed creating the power. But where a power is executed by deed, the donee must expressly reserve a power of revocation, in the deed executing the power, otherwise the appointment is irrevocable, even if the original power authorize the donee to appoint and revoke his appointment, *Tele v. Bond*, Prec. Chanc. 474; Sugd. Pow. 325, 6th ed. Where power is executed by will, it is always revocable, although no express power of revocation is reserved, Sugd. *ub. sup.* Likewise a power given to one person cannot be given by him to a third person. A direction to an appointor to such a one, naming him, to appoint, limit or direct, as he shall think fit &c. will be void; for, the donee of the power saving himself but a delegated authority, this would be contrary to the maxim in law, that *delegatus non potest delegare*, 2 Atk. 88; 2 Ves. 643. But if power be expressly reserved to be executed by the appointor and his assigns, an execution by an assignee will in such case be good, and a devisee will be a good assignee, within the words of that power, *T. Jones*, 110; 1 Ventr. 338; 2 Show. 57. When a man has both a power and an interest, he is made not only to exercise the power, but also to convey his interest by release (see PURCHASES). This, though not always necessary, is adopted by way of precaution, in case a power should not be well created, or be suspended or extinguished; But. Co. Litt. 271, b. n.

Power of revocation.

6. Appointments under a power may be either distributive or exclusive. Where the power of the appointment is to be distributive, a certain share must be given to all; but where it is exclusive, the party appointing is at liberty to give to some to the exclusion of the rest. At law, any share, however small, will satisfy the terms of the power; but in equity, relief was given at an early period against any appointment technically called an illusory (in the Term Reports *illusory*) appointment, where the share was very disproportionate to the amount of the fund to be distributed, and the number of objects

Distributive appointments.

Exclusive appointments.

Appointments. to participate of it, 1 T. R. 438; 1 Vern. 67; Sugd. Pow. 494, 6th ed. But, in consequence of the difficulty of determining what ought to be deemed a substantial share, so as to render an appointment valid, and of the frequent litigation which was occasioned by this uncertainty, it is now provided, by the Illusory Appointment Act, 11 G. 4 & 1 W. 4, c. 46 (one of the five Acts brought in by Sir E. Sugden), that no appointment, which shall be made in exercise of any power or authority to appoint any property, real or personal, shall be invalid, on the ground that the share is unsubstantial, illusory or nominal; by which provision the jurisdiction of the Court of Chancery is taken away, and the doctrine of appointments is restored to its original state as at common law, Sugd. Acts, Jemmett's ed.

Effect of certain words in appointments. 7. Where it is intended to give a power of appointing a fund to several objects, or any of them exclusively, the intention ought to be expressed with precision, as, "to all or every such one or more exclusively of the other or others of the objects as the donee shall appoint." It has been held, that a power to appoint amongst the children, as the donee shall think proper, did not authorize an exclusive appointment, the word "amongst" being equivalent to "all and every," *Kemp v. Kemp*, 5 Ves. 849. And in an early case, upon a gift to the wife, upon trust and confidence that she would not dispose thereof but for the benefit of the children, it was determined that no child could be excluded, *Menzey v. Walker*, Cas. Ab. Eq. 72.

Stamp duty on appointments. 8. By the 55 G. 3, c. 184, the stamp required for an appointment in execution of a power is 1*l.* 15*s.*; and for every entire quantity of 1000 words over and above the first 1000 words a further progressive duty of 1*l.* 5*s.*

APPOINTMENTS DELEGATING AN AUTHORITY.

Delegation of authority. 9. A delegation of an authority must be by deed, in order to shew that the person appointed actually has the power to represent his principal, and to what extent, Salk. 9. It is not however necessary for an attorney, having merely a naked authority given to him, to be a party to the deed appointing him, 2 Roll. Ab. 8, 9; Shep. Touchst. 217.

Naked authority by whom exercised. 10. Few persons are excluded from exercising a naked authority, to which they are delegated, for the execution of such an authority can be attended with no prejudice or inconvenience to the parties acting under it; therefore, infants and femes covert may act as attorneys, Perks, 148; Co. Litt. 52 a, and 112 a.

11. The distinction between a naked authority and one coupled with an interest, was formerly of greater importance than it is now, owing to the intervention of courts of equity. It was formerly held, that if one of two executors empowered by a will to sell lands died, the survivor could not sell, having merely a naked authority, Co. Litt. 113 a. But equity would now compel an execution of the power in favour of those for whom it was created, 1 Ch. Ca. 139; 1 Arg. Co. Litt. 113 a, n. 2. At common law, if one of several executors empowered to sell lands refused, the others could not sell; but by 21 Hen. 8, c. 4, the rest in that case are invested with the power of selling.

Appointments.

Distinction between a naked authority and one coupled with an interest.

12. When a person has an authority, as an attorney, to do any act, he is sought to do it in the name of the person giving the authority, 9 Co. 76; 8 tra. 765. Where executors are empowered to sell lands, they may do it in their own name, 9 Co. 77 a. So when a man does an act which cannot be effectual, otherwise than as done by virtue of his authority, this shall be deemed to be in execution of his authority, although done in his own name, Salk. 95, 96.

Delegated authority how to be executed.

13. As a delegated authority cannot be assigned or transferred by the party receiving it to another, a deputy cannot appoint a deputy, nor a person having a power of attorney delegate his power to another, unless he be expressly authorized so to do by the deed of appointment, 2 Roll. Ab. 8; Bunb. 166. (See further, POWERS OF ATTORNEY.)

Not to be delegated.

APPOINTMENTS IN EXECUTION OF A POWER.

Obs. As to the nature of such appointments, see Pref. sect. 1—8.

No. XCVI.

No. XCVI.

Freeholds, &c.

Appointment of a Freehold Estate to Children, to be indorsed on a Deed of Release.

Know all Men by these Presents That I the within named *(Husband)* by force and virtue of the power and authority to me in that behalf given or received in and by the within written indre and of all or. (a) powers and authorities enabling me

Appointment.

(a) As to the form of the deed, see APPOINTMENTS, Pref. sect. 4.

No. XCVI. Freeholds, &c.	thereunto do by this my writing under my hand and seal testified by the psns whose names are hereunder subscribed as witnesses hereunto direct limit and appt all and evy the manors messes lds tents and heredts in and by the within written indre granted and reld or mentd or intended so to be with the appts thof from and immly after the dece of me the sd (H.) and (W.) my now wife to and to the use and behalf (a) of all and evy the chn [whether sons or daurs] of me the sd (H.) by the sd (W.) my wife born or to be born [except an eldest or only son for the time being of me and my sd wife] to be equally divided betw them share and share alike as tents in common and not as jt tents And the hrs of the respive bodies of all and evy the sd chn lfully issuing [except of such eldest or only son] And if one or more such chn shall happen to die witht issue then as to the share or shares of him or her or them so dying witht issue to and to the use of the survors or others of them [except as afd] share and share alike and the hrs of their respive bodies issuing [except as afd] And if all such chn but one shall happen to die witht issue or if there shall be but one such child besides an eldest or only son then to and to the use of such only child and the hrs of his or her body issuing And in deft of such issue then to and to the use of such eldest or only son and the hrs of his body And in deft of such issue then to and to the use of me the sd (H.) and of my hrs and ass for ever <i>Provided always</i> That if any younger son of me by my sd wife shall by the death of an elder son witht issue become an eldest or only son then and in such case and so often as the same shall happen the share and shares of such younger son so become an elder or only son shall be go and remain to and amongst the rest of my sd chn and the hrs of their respive bodies in like manner as if such younger son had been actually dead witht issue any thing hin contd to the contrary in any wise notwithstanding <i>Provided always</i> That it shall be lful for me the sd (H.) at any time or times during my life by any writing or writings under my hand and seal attested by two three or more witnesses or by my last will and testmt in writg by me signed sealed and published in the presence of the like number of
To the use of children equally.	
Survivorship.	
Provisions to a younger son becoming an elder.	
Power of revocation.	

(a) As to exclusive appointments, see Pref. sect. 6.

uses to (a) revoke alter make void or change all and evy or
 ie uses and estes hby limited or apptd of or concerning
 . manor messes lds tents and hereds and evy pt thof and
 : sd writg or writgs under my hand and seal and attested
 to limit direct and appt the same or any pt thof to or to
 e of all or any of the chn by my sd wife and the hrs of
 or any of their respive bodies in such pts and proportions
 er and form as I shall think fit with or witht power of
 tion any thing hin or in the within written indre contd to
 ontrary in anywise notwithstg *In witness &c. see ante,*
 [LVI.

No. XCVI.
Freeholds, &c.

Signed sealed and delivered being first duly stamped (c)
 presence of us.



*intment under a Power in a Settlement where old Uses are
 oked and new ones are appointed, see post, PURCHASES.*



*eyance by Appointment and Release from a Vendor to a
 Purchaser, see post, PURCHASES.*



No. XCVII.

No. XCVII.
*Of Freeholds
 and Copyholds.*

*intment of Freehold and Copyhold Estates under a Power in
 a Settlement, with Power of Revocation.*

*s Indre &c. see No. LXXXV. Betn (husband) of &c. and
 wife of the first pt (trustees) of &c. of the second pt
 : son) eldest son of the sd (H.) and S. his wife of the third
 ond son) second son of the sd (H.) and S. his wife of the
 pt and (third son) third son and only or. surviving child
 sd (H.) and S. his wife and which sd (T. S.) is a minor
 age of or thereabouts of the fifth pt *Whas* by an*

- (a) As to the power of revocation, see *ante*, Pref. sect. 5.
 (b) As to the attestation, see sect. 4.
 (c) As to the stamp, see sect. 8.

No. XCVII.
Of Freeholds
and Copyholds.

Recital of deed
of appointment,

and grant.

Uses.

indre of apptmt and rele bearing date the day of and
made betn the sd (H.) and S. his wife of the one pt and the sd
(T.) of the or. pt *It was witnessed* That in pursuance of and
obedience to a decretal order of the High Court of Chancery
made in a cause whin the sd (H.) and S. his wife were pliffs
and the sd (T.) were defts and in pursuance and by virtue of
certain powers and authties given and reserved to the sd (wife)
in that behalf and in exercise and exon thof she the sd (W.) with
the privity and approbation of the sd (H.) did direct limit and
appt that all and singr the freehd messes or tents hereds and
preses thnfter mentd and expsd to be thby granted and reld
with their and evy of their appts shd go be and remain to the
use of the sd (T.) their hrs and ass for ever upon the trusts
thnfr decld concerning the same *And* it was by the sd indre
of apptmt and rel furr witnessed that in furr pursuance of the
sd decretal order the sd (H.) and S. his wife did grant confirm
and rele to the sd (T.) and their hrs *All &c.* *To Hold* the same
unto and to the use of the sd (T.) their hrs and ass for ever
upon the trusts thnfr decld of and concerning the same *And*
by the sd indre now in recital it was decld and agrd betn the sd
pties thereto and parlarly the sd (H.) did thby for himself his
hrs exs ads and ass and for the sd S. his wife and her hrs covt
and agree with the sd (T.) their hrs and ass that the sd (H.) and
S. his wife togr with any psn or psns thin named shd as soon
as conveniently might be after paymt of a certain mtge debt
of £ surrender into the hands of the lord of the manor of
L *All that &c.* holden of the sd manor by the yrly rent
of £ to the use of the sd (T.) their hrs and ass for ever
accrg to the custom of the sd manor upon the trusts thnfr
decld concerning the same *And* it was by the sd indre now in
recital mutually decld and agrd by and between all the sd pties
thereto that the sd (T.) their hrs and ass shd from thenceforth
stand and be seised of or intitld to and interested in all and
singr the sd freehd and customary or copyhd messe lds tents
hereds and pres thinbfe mentd and described and thby limited
and apptd granted or reld or intended so to be and covd to be
surrendered respby as afid *In trust* for the sd (H.) and his ass
during his life and after his dece *In trust* for the sd (W.) and
her ass during her life for her jointure and in bar of dower and

er the dece of the sd (H.) and S. his wife or of the survivor
 them then *In trust* for all and evy the chn of the sd (H.) on
 : body of the sd (W.) begotten for such estes at such ages
 l in such pts shares and proportions and with such remrs and
 itations over and charged and chrgbe with the paymt of such
 ual or gross sums [such remrs or limitations over being and
 gd to be for the bent of such chn some or one of them] and
 such manner and form as they the sd (H.) and S. his wife at
 y time or times during their jt lives by any deed or deeds in
 iting with or witht power of revocation to be by both of them
 ded and delivered in the presence of two or more credible
 tnesses shd jtly direct or appt and in deft of such jt direction or
 ptmt as the survor of them the sd (H.) and S. his wife by any
 ed &c. extd as afd or by his or her last will and testament in
 iting or any writing purporting to be in the nature of his or
 r last will and testmt or any codicil to be by him or her signed
 ad published (a) in the presence of three or more credible wit-
 esses shall direct or appt and in deft of any such direction or
 pptmt upon the sevl trusts mentd in the indre now in recital
 lad *whas* by an indre bearing date the day of [in-
 orsed on the sd recited indre of apptmt and rele] and made betn
 be sd (H.) and S. his wife of the first pt the sd (T.) of the
 econd part, and (*new trustees*) of &c. of the third pt after re-
 iting that the sd mtge debt of £ had been pd but that
 o surrender of the sd copyhd heredt had been made to the sd
 T.) their hrs and ass in pursuance of the covt in the sd recited
 dre for that purpse contd and that the sd (*one old trustee*)
 is desirous of relinquishing the trusts by the same indre re-
 sed in him jtly with the sd (*other O. T.*) and had applied
 to the sd (H.) and S. his wife to be dischrgd therefrom and
 at thereupon the sd (H.) and S. his wife had applied unto and
 d requested the sd (N. T.) to become a trtee for the purps of
 e same indre jtly with the sd (O. T.) in the stead and room
 the sd (*one old trustee*) to which the sd (N. T.) had consented
 d agrd *It was by the Indre* now in recital witnessed that the
 (H.) and S. his wife did nominate constitute and appt the

No. XCVII.
*Of Freeholds
 and Copyholds.*

Appointment of
 new trustee.

(a) As to the solemnities required by 7 W. 4 & 1 V. c. 26, in executing a
 ver of appointment by will, see Append. No. XVII.

**No. XCVII.
Of Freeholds
and Copyholds.**

**Grant to the
new trustee.**

**Covenant to
surrender copy-
holds.**

Appointment.

Uses.

sd (*N. T.*) to be a trustee in the room and stead of the sd (*O. T.*) to act with the sd (*other O. T.*) in the trusts mentd in the sd indre And by the sd indre now in recital the sd (*O. T.*) at the request and by the direction of the sd (*H.*) and S. his wife *Did* bargain sell and rele unto the sd (*N. T.*) and his hrs *All* the pres so granted and reld unto and to the use of the sd (*O. T.*) their hrs and ass *To hold* the same unto the sd (*N. T.*) his hrs and ass to the use of the sd (*O. T.*) and himself the sd (*N. T.*) their hrs and ass for ever upon the trusts decl'd in the sd indre And in the sd indre is contained a covt on the pt of the sd (*H.*) to surrender or procure to be surrendered all the copyhds to the use of the sd (*O. and N. T.*) their hrs and ass upon the trusts as afd *Now this indre witnesseth* that by force and virtue and in exercise and exon of the power or authty to them the sd (*H.*) and S. his wife for this purpe given (*a*) by the sd recited indre of the day of and of all or. powers and authties in any-wise enabling them or either of them in this behalf they the sd (*H.*) and S. his wife do jtly direct and appt that the sd (*O. and N. T.*) their hrs and ass shall immely from and after the dece of the survor of them the sd (*H.*) and S. his wife stand and be seised of all and singr the sd freehd and customary or copyhd messes lds tents heredit's and preses described in the sd recited indre of apptmt and rele and so resp'y conveyed and covtd to be surrendered to them as afd and of their and evy of their appts upon and subject to the provo hnafter expssd and contd of and concerning the same that is to say as to one equal undivided third part (*b*) or share [the whole into three equal pts or shares to be divided] of and in the sd freehd and customary &c. with the appts *In trust* for the sd (*E. S.*) his hrs and ass for ever And as to one or. equal undivided third pt &c. of and in the same freehd &c. *In trust* for the sd (*S. S.*) his hrs and ass for ever And as to the remaining undivided third pt &c. *In trust* for the said (*T. S.*) his hrs and ass for ever *But* if the sd (*T. S.*) shall die under the age of 21 yrs witht leaving issue of his body living at the time of his dece then *In trust* for the sd (*E.*) and (*S. S.*) in equal shares as tenants in common and for

(*a*) As to the effect of this clause, see *ante*, Pref. sect. 4.

(*b*) As to the different kind of appointments and the Illusory Appointment Act, see *ante*, Pref. sect. 6.

their respective heirs and assigns forever *Provided always* and the said (H.) and S. his wife do hereby full direct and appoint that it shall be lawful for them the said (H.) &c. at any time or times during their joint lives by any deed or deeds writing or writings with or without power of revocation (a) to be by both of them sealed and delivered in the presence of two or more credible witnesses or for the survivor of them the said (H.) &c. at any time or times during the life of such survivor by any deed &c. to be by him or her extended as aforesaid or by his or her last will or testament in writing or any writing &c. to be by him or her signed and published in the presence of and to be attested by three or more credible witnesses to revoke all or any of the trusts hereinbefore appointed of and concerning the said messes &c. and in lieu of the trusts so revoked to appoint such or. trusts as the said (H.) &c. or the survivor of them shall conformably to the power or authority in that behalf contained in the said recited indenture think proper any thing hereinbefore contained to the contrary notwithstanding.

In witness &c. see ante, No. LXXX.

No. XCVII.
*Of Freeholds
and Copyholds.*

Power of revocation.

No. XCVIII.

Appointment of a Freehold in Trust for Creditors.

*This Indre &c. see No. LXXXV. Betw (Debtor) of &c. of the one part and (Trustees) of &c. of the other part three parts and also trees named and appointed in and by an indenture of assignment of three parts bearing even date herewith and made betw the said (D.) of the first part the said (T.) of the second part and (Creditors) the several persons parties thereto being joint and separate creditors of the said (D.) of the third part *Whas* by indenture of feoffment bearing date the day of [with livery of seisin thereon indorsed] and made betw (husband) and S. his wife then late only child and heiress of therein described of the first part the said (D.) of the second part and (trustee) of &c. a trustee for the said (D.) of the third part *It is witnessed* that for and in consonance of £ to the said (H.) and S. his wife paid by the said (D.) and 5s. to him paid by the said (T.) he the*

No. XCVIII.
*In Trust for
Creditors.*

Recital of feoffment to debtor.

(a) In an appointment by deed, such a power must be expressly reserved, see *ante*, Pref. sect. 5.

No. XCVIII. *In Trust for Creditors.* sd (H.) and S. his wife did by the direction of the sd (D.) give grant enfeoff and confirm unto the sd (D.) his hrs and ass *All &c. To Hold* the same to the sd (D.) his hrs and ass to the uses thin decl'd that is to say *To the use* and behoof of such psn and psns and to and for such estes uses intents and purps as the sd (D.) in and by any deed or deeds writing or writings to be sealed and delivered by him in the presence of and to be attested by two (a) or more credible witnesses or in and by his last will and testmt in writing to be by him duly exted and attested by three (a) or more credible witnesses should direct declare give devise convey grant limit or appoint the same and in the mean time and until such direction &c. should be made and extd And subject thereto *To the use* of the sd (D.) and his ass for and during the term of his natural life witht impeachment of waste And from and after the determination of that este by any manner in his life-time *To the use* of the sd (T.) his hrs and ass for and during the natural life of the sd (D.) *In trust* nevrs for him the sd (D.) and his ass and to permit and suffer him and them to rece and take the rents issues and profits to and for his and their own use and bent and from and immly after the determination of the este so limited to the sd (T.) and his hrs as afd And subject thto *to the use* of the sd (D.) his hrs and ass for ever *And whas* in E. term next after the date of the sd recited indre of feoffment the said (H.) and S. his wife levied a fine of the sd hereds and pres in pursuance of a cort for that purpe in the sd indre contd as by the sd indre duly registered at in the county of will more fully appear *And whas* the sd (D.) entered into ptshp with in the trade of at in the county of and by divers losses and misfortunes they are become unable to pay and satisfy their jt and separate crs the whole of their respive debts *And whas* by the sd indre of assnmt of three pts hnbefe-mtd after reciting that such losses and misfortunes had happened and that the sd (D.) and his sd ptnrs were desirous of rendering to their sevl crs the utmost satisfaction in their power and had proposed to convey and assign as well all their jt property as also their separate

Power of appointment.

Fine.

Losses by debtor and partner.

Agreement to convey joint and separate estate.

(a) This difference in the mode of executing an appointment by deed or will is now rendered unnecessary by the late Will Act, 7 W. 4 & 1 Vict. c. 26, see Appendix, No. XVII.

proposal and to the end intent and purpose aforesaid and in
of 5s. of &c. to him the sd (D.) in hand paid at or before
the delivery of these presents by the sd (trustees) the rect
the sd (D.) by virtue and in pursuance of the power Appointment.
unbefore recited indenture of feoffment continued and in the exercise
of powers and authorities to him thereby reserved in him now
and to him of right belonging hath directed declared
and conveyed limited and appointed and by this present deed in
sealed and delivered by him the sd (D.) and attested
by credible witnesses whose names are hereon indorsed
do direct declare &c. unto the sd (trustees) their heirs and ass
with all and every their respective rights members and appoints
the estate right title and intent of him the sd (D.) and his
and ass both at law and in equity To Have and to Hold to Habendum.
(T.) their heirs and ass to the use and behoof of them the
(trustees) their heirs and ass for ever Upon Trust nevertheless to Trusts.
the sd hereditaments and premises to be sold in the most advanta-
geous manner and for the best price that can be obtained for
me and to carry over pay and apply the net proceeds of
sale or sales to the account of the separate estate of the sd (D.)
for and applicable to the respective uses and purposes which
and by the sd abovementioned indenture of assignment for the benefit
joint and separate creditors of himself the sd (D.) and of the sd
expressed and decided and to and for no other use intent or purpose
And the sd (D.) doth hereby for himself his heirs and ass
do and agree to and with the sd (trustees) their heirs and

No. XCVIII.
*In Trust for
Creditors.*

Receipts of
trustees to be
valid dis-
charges.

Debtor or trust-
tee does no act
to incur.

Covenants for
title.

the sd heredit and pres and procure the sd (T.) his hrs and ass also to join and concur thin and exte and deliver all such deeds conveys and assurs in the law as shall be valid and nassy to confirm the same And it is hby decld that the rect and rect of the sd (trustees) and survor and survors of them or the exs or ads of such survor shall be good and sufficient dischas to any purchaser or purchasers of all or any pt of the sd heredit and preses at any such sale or sales and that such purchaser or &c. shall not be bd to see to the applcon or be in any respect liable for or accountable to any psns whmsr either for the non-application or misapplication of all or any pt of the purchase-money to be pd by them for the same And also the sd (D.) doth hby furr covt &c. to and with the sd (trustees) their hrs and ass that neither he the sd (D.) nor the sd (T.) hath or have at any time or times htofe made done committed or extd any act deed matter or thing whtsr whby or on acct whof the sd heredit and pres or any pt thof are or can shall or may be incumbered charged aliened or enfeoffed limited or apptd in any manner hwsr and likewise that he the sd (D.) for and notwstg any act deed matter or thing whtsr to the contrary now hath in himself good right full power and lful and absolute authty to limit and appt the same in manner afd And furr that the sd (D.) his hrs and ass and also the sd (T.) his hrs and ass and all and evy psn and psns whmsr claiming and to claim under him and them or any of them shall and will at the request of the sd (trustees) their hrs and ass exte and perform all such or. and furr acts deeds matters and things whtsr which shall become necssy in and towds the better more perfectly and absolutely granting conveyg assurg enfeoffg limitg and apptg all or any pt of the sd heredit and pres either to them the sd (trustees) their hrs and ass or to such psn or psns purchaser or purchasers as they shall direct and appt.

In witness &c. see ante, No. XLVI.

Mortgage by Appointment and Release, see post, MORTGAGES.

and Demise to Trustees for a Term of a certain Lands charged with Portions for younger Children, trust to indemnify the Purchasers of other Parts of Lands from such Portions (Proviso for cesser of the post, PURCHASES.



and Assignment of Two-Fourth Parts of Monies from the Sale of certain Estates, see post, PUR-



No. XCIX.

No. XCIX.
Of a Jointure.

ment of a Jointure by Virtue of a Power under a Will.

Jointure is strictly a joint estate in freehold lands, limited to husband and wife; but on account of the numerous inconveniences which attended such a limitation of lands, as well to the husband as the heir, it has long been the general practice to limit a jointure to the intended wife for her life by way of jointure, to continue from the death of the husband, with powers of distress and generally with a term for years to a trustee for further payment thereof. By the Stat. of Uses, 27 H. 8, c. 10, it is provided that a jointure or settlement upon a wife before marriage shall bar of her dower in the case of adult women, but it has not extended to infants. An infant may, therefore, notwithstanding a jointure settled upon her, waive it, and elect to take her dower. So if a jointure be made after marriage, it will not bar her dower, either at law or in equity, unless she accept thereof after her husband's death, Noy's Max. 40; in this latter case it is presumed that the wife's dower is now barred by 3 & 4 Edw. 1, sects. 6, 7, see *Appendix*, No. XI.

Jointure made &c. see ante, No. LXXXV. Grant of an Estate (intended husband) of &c. grandson &c. of the father of intended wife) of &c. and (intended wife) eldest daughter of the said (father) of the second part and of &c. of the third part Whas [recite the will of the testator, whereby among other things he devised all his manors

No. XCIX. *messes and tents lands and heredit unto the sd (I. H.) his*
Of a Jointure. *grandson In which sd will is contd a power or provo for the sd*
 Recital of will. *(I. H.) to charge any pt or pts of the sd manors lds and preses*
with any sum of money by way of annnty or rent-charge for the
jointure of any woman he might marry but so as that such
annual sum or rent-charge should not exceed £ for every
£ which his sd grandson should receive for the marre
 Of death of *portion of such woman And whas [recite testator's death*
 testator. *witht revoking his will, and probate of the will, and that the sd*
(I. H.) became intitld to the sd preses devised to him by the
 Of contract for *sd will] And whas a marre is intended to be shortly had and*
 a marriage. *solemnized betn the sd (I. H.) and sd (I. W) Now this Indre*
 Testatum. *witnesseth That in conson of the sd intended marre and the*
sum of £ of lful money of Gt Britn to the sd (I. H.) in
hand &c. by the sd (F. of the sd I. W.) in full for the marre
portion of the sd (I. W.) his daur the rect whof &c., see RELEASE
And for making such settlement jointure and provision for and
upon the sd (I. W.) as afd He the sd (I. H.) by virtue and in
exercise and exon of the power and authy to him given and
reserved in and by the sd in pt recited will and all and evy or.
 Appointment of *power and powers authority and authorities to him in that be-*
 £ as a *half given or any ways enabling him thereunto &c. Hath granted*
 jointure to in- *limited and apptd and by this present writg signed sealed and*
 tended wife. *delivered by him the sd (I. H.) in the presence of the two*
credible witnesses whose names are intended to be hereon
written or indorsed as witnesses attesting the same Doth grant
limit and appoint unto and upon the sd (I. W.) One annual
sum or yrly charge of £ being after the rate of £
pr yr for and in respect of every 100l. which the sd (I. H.) is
become intitld to and hath actually recd as the present portion
or fortune of the sd (I. W.) his intended wife free and clear of
and from all taxes chas and deductions whatsr parliamentary
and orwise to be issuing paye had and recd out of and from
and chagd and chagbe upon all and singr the sd manors messes
and tents lds heredit &c. (parcels) being the same lds and
heredit as were devised to him by the will of the sd (testator)
 Habendum. *as afd To Have hold take and enjoy the sd annual sum or yrly*
rent-charge of £ hby granted limited and apptd or intended
so to be unto the sd (I. W.) and her ass to commence in posson

mly after the dece of the sd (*I. H.*) for and during
 her natural life in case the sd intended marre shall
 and she shall survive the sd (*I. H.*) her sd intended
 or in nature of a jointure and in lieu bar and satis-
 the dower freebench and thirds at common law which
 (*I. W.*) shall or may at any time or times be intitled
 might have or claim in to or out of all and evy or
 sd manors messes or tents lds and hereds whof or
 sd (*I. H.*) shall be seised or intitled for an este of
 d to be pd to her the sd (*I. W.*) and her ass &c.
 proportional pt &c. And the sd (*I. H.*) doth hby
 &c. (*Power of distress and entry, see Grant of*
y) *And this Indre furr witnesseth* That in conson
 es and also of &c. to him the sd (*I. H.*) in hand by
 well and truly pd He the sd (*I. H.*) *Hath* granted
 sold &c. and by these prests *Doth* &c. (*demise to*
a term of yrs, see Grant of an Annuity) Upon
 evss and to &c. that is to say *In trust* to permit and
 d (*I. H.*) or his ass during his life to rece the rents
 f the sd manor &c. And from and after the dece of
 (*I.*) then upon trust for the better securing the paymt
 nnty or rent-charge of £ in manner hnbefe
 aymt of the same unto the sd (*I. W.*) and her ass
 e sd intended marre shall take effect and she shall
 sd (*I. H.*) And for that purpe in case the sd annnty
 be behind &c. then (*power to raise money, see Grant*
uity) And the sd (*I. H.*) doth hby for himself his
 c. with and to the sd (*T.*) their exs &c. in manner
 that is to say That he the sd (*I. H.*) at the tyme of
 g and delivery of these prests hath good right full
 lful authy under and by virtue of the sd in pt recited
 at limit and appt unto and to the use of the sd (*I. W.*)
 ual sum or yrly rent-charge of £ and to make
 ssuable out of and chagbe upon the afd manors messes
 nd hereds and preses in the manner hnbefe expssd
 That the sd (*I. W.*) and her ass shall and may at all
 yg the term of her natural life in case the sd intended
 ll take effect and she shall happen to survive the
 her intended husband peaceably and quietly have

No. XCIX.
Of a Jointure.

Demise to trust-
tees.

Power to raise
money, &c.

Covenants for
title.

That husband
hath power to
appoint.

Quiet enjoy-
ment.

No. XCIX. *of a Jointure.* hold rece perceive take and enjoy the sd annual sum or yrlly rent-charge of £ so granted limited and apptd to her in jointure as afd to and for her and their own proper use and bent without any let suit &c. (see RELEASE) And that free &c.

Free from incumbrances. And moreover that he the sd (I. H.) and his hrs and all or psns claiming or to claim by from or under him or them or by from or under the sd (testator) deced shall and will from time to time and at all times at the request of the sd (T.) but at his and their own proper costs do all such acts and things for the furr better and more perfect granting limiting appntg and assury unto and to the use of the sd (I. W.) and her ass during her life in case the intended marre shall take effect and she shall survive the sd (I. H.) her intended husband the sd annual sum of £ hnbefe mentd to be hby limited to and for her jointure as afd as by the sd (T.) or the survivor of them or the exs &c. of such survors or his or their counsel in the law shall be reasonably advised devised or required *In witness &c. see ante, No. XLVI.*

No. C.
Married Woman.

No. C.

Appointment and Disposition by a Married Woman.

Obs. As to the disposition of property by married women, see ante, Pref. sect. 3.

Recital of settlements.

To all persons to whom these presents shall come (appointor) of &c. sendeth greeting *Whas* the sd (A.) then (*maiden name*) by indres of lease and rele bearing date respively the days of in conson of a marre then intended betn the sd (A.) and (*husband*) of &c. Did grant convey release and confirm unto (*trustees*) all that messe &c. *To be holden* unto the sd (T.) their hrs and ass for ever to the uses following (that is to say) to the use of the sd (A.) until the sd intended marre should take effect and aftwds to the use of the sd (H.) for the term of his natural life and after his dece to the use of the sd (A.) for term of her natural life witht impeachment of waste with remur to &c. in trust for &c. *And* from and after the end or or determination of the sd term of &c. to the use of the hrs of the body of the sd (A.) by the sd (H.) lfully begotten *And* for

hrs to the use of such psn and psns as the sd (A.)
 at the consent of the sd (H.) by any writing under
 and seal and testified by two or more credible wit-
 y her last will and testmt in writing should direct
 the same and in deft of such direction limitation
 as afd or so far as the same shd not extend to the
 l (H.) his hrs and ass for ever *And whas* the sd
 twds take effect and the sd (A.) hath not yet had
 any likelihood of her having any child or chiln of
 the sd (H.) *Now know ye* That the sd (A.) in
 f the power to her reserved and given in and by the
 cited indre of rel hath limited directed and apptd
 present writing under &c. *Doth* limit direct and
 l and singr the sd preses hnbefe mentd to be com-
 e sd in pt recited indre with the appts shall from
 e several deceases of them the sd (H.) and the sd
 remain and the sd (T.) and their hrs and all and
 and psns and his and their hrs standing and being
 l in the sd messe tent and preses above recited shall
 after the death of the sd (H.) and (W.) stand and
 of and of evy pt and pcl thof with the appts to the
 oof of &c. his hrs and ass for ever and to and for
 intent or purpe whatsr *Provided nevss* That these
 not nor shall any thing hincontd extend or be con-
 tend to the prejudice of any issue of the sd (W.) by
 in case such issue shall happen to be hrafr born
 c. see *ante*, No. XLVI.

No. C.
*By a Married
 Woman.*

Marriage.

Appointment.

No. CI.

*t by a Mother in Favour of her Son under a Power
 in an Act of Parliament.*

No. CI.
By a Mother.

whom, &c. see *ante*, No. C. I (*appointor*) widow and
 B. of &c. send greeting Pursuant to and by virtue and
 and exon of the power and authty to me for that
 or limited or in me vested by an Act of Parlt made
 in yr reign of her prest Maj. intituled

Recital of Act
 of Parliament.

No. CI.
By a Mother.

Appointment
by mother.

Subject to term
of 500 years.

"An act for discharging the uses and trusts of certain manors &c. settled upon and for the use of W. B. and M. his wife" &c. and of evy or. power or authty whatsr in any wise enabling me in this behalf I the sd (*appointor*) Do by this deed or writing under my hand and seal exted by me in the presence of the three psns whose names are intended to be indorsed hon as witnesses to my signing sealg and delg these prests limit direct and appt that all the manors or reputed manors of C. in the Co of B. and all and evy the messes farms lds tents and heredts situate lyg and being in or some or one of them in the sd Act parlarly mentd [save and except the messes &c. now in the occupation of or either of them or either of their ass or undertents] with their and every of their respive members and appts shall after the dece of me the sd (*appointor*) be and remain *To and for* the sole and proper use and behoof of my eldest son W. B. his hrs and ass for ever and to and for no or. use int or purpe whatsr subject to nevss and witht prejudice to a certain term of 500 yrs for which I the sd (*appointor*) by a deed poll bearing date &c. have limited and appted among or. heredts the sd manors and preses hby limited with their respive appts to my daur S. now the wife of S. G. lieutenant in her Maj. Regt &c. and also subject and witht prejudice to the sum of £ secured by the sd term and the int thof.

In witness &c. see ante, No. XLVI.



No. CII.

Of Money to be
paid to Bankers.

No. CII.

Appointment of Money to be paid by Trustees to Bankers to be drawn for by a Married Woman for her separate Use or received by her.

To all to whom these prests shall come or be shewn (husband) of &c. and B. his wife formerly (maiden name) spinster sevly send greeting.

Recitals.

Whas (recite settlement, see ante, No. CI.) And whas the sd legacy of £ with a small arrear of int thon is forthwith to be recd by the sd (trustees) upon under and subject to the trusts decld and expssd in and by the sd hnbeft in pt recited indre of

tlement *And whas* the sd (*wife*) is desirous that the sd sum of £ and the int due and to become due for the same shd be paid into the bank of bankers and coptnrs sub- to the order and disposition of the sd (*W.*) notwg her co- ure and the sd (*H.*) hath agrd to join with her in apptg the sum of £ and the int due and to become due for the same be paid into the bank of the sd subject to such order as the sd (*W.*) as afd.

No. CII.
*Of Money to be
paid to Bankers*

Now know ye That for divers good causes and consons the sd Appointment.
) thunto especially moving and by virtue and in pursuance of exercise of the power or authty given limited or reserved to the sd (*H.*) and B. his wife jtly as afd in or by the sd in pt re- d indre of settlemt and by virtue and in exercise and exon all and evy power and powers authty and authties enabling the sd (*H.*) and B. his wife jtly and the sd (*wife*) solely in behalf they the sd (*H.*) and B. his wife by this their deed or trument in writing signed sealed and delivered by them in the sence of two credible witnesses and to be attested by the ne witnesses do jtly direct and appoint And the sd (*W.*) by deed note or instrument in writing under hand and signed sealed or delivered by her and to be attested as afd doth direct and appt that the sd (*T.*) or the survor of them or the exs ads ass of such survor do and shall forthwith or as soon as con- veniently may be after the sd legacy or sum of £ and the t due and to become due for the same shall be pd to him or hem pay the same legacy &c. and the int due and to become due for the same in the meantime till such paymt into the bank of the sd to the crt of an acct to be opened and kept with the sd *To the intent* that the same principal sum of and int shall be at the disposal of the sd (*W.*) in the same man- ner to all intents and purps as if she was sole and unmarried witht any control or interference by or on the pt of the sd (*H.*) and so and in such manner that payments to the sd (*W.*) psnly with or witht any writg or any or. dispsn of the same principal ac. or any pt thof pursuant to the order banking cheques bills of exchange deeds wills or any or. writg under the hand of the sd (*W.*) may be effectual dischas to the sd their exs &c. or any of them for so much and such pts thof as shall be pd as afd And the sd (*bankers*) their exs &c. shall not be obliged or

No. CII.
Of Money to be
paid to Bankers.

required to see to the applicon or be answe or accte for the mis-
applicon or nonapplicon of the mos to be pd to or to the order
of the sd (W.) as afd And moreover that on paymt of the sd
sum of £ &c. into the sd bank of or the survor or
survors of them and notwg the death of any one or more of the
sd ptnrs or the admission of any or. psn or psns into the ptshp
in the mean time the sd (T.) their hrs exs ads and ass shall be
acquitted and dischg'd of and from any or. or furr paymt of the
same principal &c. which shall be pd by him or them and also
of and from the trusts decl'd thof or any liability for the mis-
applicon or nonapplicon of the same.

In witness &c. see ante, No. XLVI.

No. CIII.
Of Money.

No. CIII.

Appointment and Disposition of Money by a Married Woman.

Recital of a
conveyance to
trustees of a
mortgage to the
use of wife.

To all &c. (see last Precedent) Whas in and by certain articles
of agrt bearing date &c. and made betn &c. reciting among other
things That there was a marriage intended to be had betn the
sd (appointor) and (husband) of &c. And that (trustees) were
possd of and interested in a mtge made by &c. *In trust* for the
sd (A.) he the sd (H.) did thby covt and agree with the sd (T.)
that they the sd (T.) shd from thenceforth stand possd of and
interested in the sd sum of £ owing by the sd (mortgagor)
and in the mtgd lds whby the same was secured upon the trusts
and to and for the intents and purps following that is to say *In*
trust That they shd rece the int thof and pay the same into the
hands of the sd (A.) for her separate use and that the sd (H.)
shd have nothing to do therewith And furr that the sd (A.)
might during her life or by her last will or by any or. writing
whether she should be sole or under coverture witht the consent
of the sd (H.) give and dispose of the sd sum of £ or any
pt thof to such psn and psns and in such manner and form as
she shd think fit And whas the sd (A.) hath since intermarried
with the sd (H.) and hath recd all the int of the sd sum of £
until the day of the date hereof and the sd (mortgagor) hath also
pd in the sd principal sum of £ *Now &c. (see last pre-*

Wife to ap-
point.

Testatum.

it she the sd (A.) by virtue &c. Hath hby disposed di-
d appd and by &c. *Doth* &c. the sd (T.) to pay £
above-mentd sum of £ unto &c. and the sum of
eing the residue thof unto &c. And the sd (A.) doth
re that such paymts to the sd &c. with each of their
ly shall be as effectual and full discharges as though
was actually pd to and recd by herself *In wit-*

No. CIII.
Of Money.

No. CIV.

*ment of Portions by a Tenant for Life under a Power
in a Settlement.*

No. CIV.
Portions.

ndre made &c. see *ante*, No. LXXXV. (a) Betn (*tenant*
f &c. of the one pt and (*trustees*) of &c. of the or. pt *Whas*
bearing date &c. and made &c. betn the sd (T.) and
n) the eldest son and heir of the sd (T.) of the one pt
l. of the or. pt the sd (T.) and (E. S.) for the consons
td did grant bargain rele and confirm unto the sd G.
is hrs *All those* &c. to the use of the sd (T.) for his life
te remr to the use of the sd (E. S.) his hrs and ass for
which indre among other things are contained powers
os whby it is decld to be the true intent and meaning
indre and the sd pties thto that the sd (T.) shd have
er and authty from time to time and at any time during

Recital of set-
tlement and
power.

re the appointment is made prospectively say, after reciting the set-
Now this Indre Witnesseth That in pursuance and exon of the sd power
e, No. XCVIII. enabling him in this behalf He the sd (*appointor*)
is present deed &c. subject and charge all and singr the sd manors
under and by virtue of the sd recited indre of &c. are and stand li-
settled to the use of him the sd (*appointor*) for his life with such power
their rights and members and appts &c. with the paymt of £ of
d with int for the same at the rate of 4l. for evy 100l. by the yr for
s and maintenance of all and evy the child and chn of the sd (*ap-*
the sd S. his wife or. than and except an eldest or only son for the
intitled in posson or in remr immly expectant on the decease of the
or) to the freehd and inbance of the sd manors &c. the same sum of
come vested in be payable and pd to such child or chn" &c. And for
e payment of the sd sum here add a lease of 500 years to trustees,
recident.

No. CIV.
Portions.

Exercise of
power.

the term of his natural life by any deed or writing to be by him sealed and delivered in the presence of two credible witnesses at least to charge all or any pt of the sd manors &c. in such manner as he shd think fit with the paymt of any sum or sums of money not exceeding £ in the whole for the portion and portions of the daurs and younger son of him the sd (T.) by M. his late wife to be pd in such proportions and at such times and in such manner and with such powers ways and means by mtge sale or orwire for raising thof as the sd (T.) should think fit *Provided always* and the true intent and meaning of these prests and the pties to the same was that if the sd (T.) shd pay or cause to be paid any sum or sums of money for the portions of the sd daurs and younger son accg to the purport of the afd first provo by any or. way or ways or. than by raising the same by the sd provo or such ways and means as are thin mentd he shd raise out of or by the preses to his own use so much money not exceeding in the whole £ for or towds the paymt and satisfaction of such money as he shd pay or cause to be pd as afd as by the sd recited indre relation being theto had more at large may appear And whas M. C. and A. C. were the daurs and E. C. the youngest son of the sd (T.) by the sd M. his late wife and upon the marre of the sd M. C. the sd (T.) pd the sum of £ and upon the marre of the sd A. C. the sd (T.) pd the like sum of £ and the sd (T.) pd to the sd E. C. the like sum of £ he having appted and by these prests apptg the sd sum of £ to be the portions of his sd daurs and younger son *Now this indre Witnesseth* That the sd (T.) by this his deed in writing sealed and delivered in the presence of two credible witnesses whose names are intended to be hereon indorsed as attesting the exon of the powers and authties given and reserved to him by the sd recited indre or orwise now in him vested *Doth* charge and make chgbe the sd manors &c. with the paymt of the sd sum of £ to him the sd (T.) his exs ads or ass And also for and in conson of the sum of £ to him the sd (T.) in hand pd by the sd (*tees*) before &c. He the sd (T.) in pursuance and exercise of the afd powers and authties *Hath* demised bargd sold limited and apptd and by these prests *Doth* demise &c. unto the sd (*tees*) their exs ads and ass *All those* manors &c. which in and by the sd recited indre were or are

entd to be granted bargained &c. with their and evy of their
 ghts members and appts *To Have and to Hold* the sd manors
 c. unto the sd (*trees*) for and during the full end and term of
 10 yrs from thence next ensuing and fully to be complete and
 ided witht impeachment of waste yielding and payg therefore
 e rent of one peppercorn only on &c. *Provided* always and it
 hby decl'd and agr'd by and betn the sd pties hto that if the sd
 E. S.) his hrs exs or ads or such psn or psns to whom the next
 mediate revn or remr of the sd preses expectant upon the de-
 termination of the sd term of 500 yrs shall for the time being
 along well and truly pay or cause to be pd unto the sd (*trees*)
 heir exs &c. the full sum of £ upon the day of
 next ensuing the date of these prests with int for the same after
 he rate of £ *per cent. per ann.* by half yrly paymts without
 making any deduction or abatement out of the same sum for or
 n respect of any taxes chas or duties chgd or imposed or to be
 chgd or imposed upon the sd preses or any pt thof or for or in
 respect of any or. cause matter or thing whatsr then the demise
 hby made and evy thing hin contd shall cease determine and
 be utterly void *Provided also* and it is hby furr decl'd and agr'd
 by and betn the sd pties hto that until def't shall be made of or
 in the paymt of the sd sum of £ or of some pt thof contry
 to the tenor and true meaning of the provo hinbefe mentd for
 paymt thof the sd manors and preses shall and may be held and
 enjoyed and the rents issues and prfts thof be recd and taken
 accg to the uses and este thin limited in and by the sd recited
 Indre witht the let suit or interruption of the sd (*trees*) or either
 of them or either of their exs ads or ass.

No. CIV.
 Portions.

Term of 500
 years.

In witness &c. see ante, No. XLVI.

No. CIV.—2.

No. CIV.—2.

*To raise
 Portions.*

*Appointment in pursuance of a Power to Trustees for a Term
 for raising Portions for younger Children.*

*This Indre tripartite made &c. see ante, No. XLVI. Betn
 D. of &c. of the first pt A. D. spinster eldest daur of the sd
 D. of the second pt and (trustees) of &c. of the third pt. Whas*

Recital of
 power.

No. CIV.—2. *To raise Portions.* by indre of lease and rele a tenant to the præcipe was made and a recovery was suffered to the use of T. D. the father for life remr to the sd T. D. for life with remr over And in the sd indre is contd a provo or power to the followg effect viz. That it shd and might be lful for the sd T. D. and S. D. &c. remr men thin named resply by his or their deed or deeds in writing to be by him or them resply duly extd in the presence of two or more credible witnesses or by his or their last will and testmt or by any codicil to be by him or them resply duly signed in the presence of three or more credible witnesses when and as they should resply become intitld to the immediate freehd in posson of and in the sd hredts to charge by raising limiting or granting any term or terms of yrs or orwise all or any of the sd manors lds and preses thrinbefe mentd with any sum or sums of money not exceeding the sum of £ for the portion or maintenance of all and evy or any such chd or chn of his or their body or bodies resply not being an eldest or only son to be raised levied and pd at such time or times and in such pts shares and propons manner and form as they the sd T. D. &c. shd resply by such deed or will as afd limit direct and appt *And whas* T. D. the elder died sevl yrs ago and the sd T. D. is now become seised of or intitld to the imme este of freehd in posson of and in the sd manors &c. comprised in the sd indre of lease and rele *And whas* the sd T. D. is desirous of exting the power limited to him by the sd recited indre of charging the sd preses with the paymt of the sd sum of £ and hath agrd to limit the sum of £ being a moiety or half pt of the sd sum of £ to be pd to the sd A. D. as and for her share or propon of the sd sum of £ as hnafr is expssd *Now this Indre Witnesseth* that in pursuance and pt performance of the afd agrt in this behalf and by force and virtue &c. of the power or authority to the sd T. D. given limited or reserved by the sd recited indre as afd and all and evy or. power &c. to him belonging in him vested or in anywise him enabling in this behalf and in exercise and exon thof He the sd T. D. by this his deed in writing duly exted by him in the presence of and attested by the two credible psns whose names are intended to be hon indorsed as witnesses to the exon of these prests by him the sd T. D. *Doth* charge *All those* manors &c. with the paymt of the sum of

Death of T. D. the elder.

Testatum.

Execution of the power.

of lful &c. for the portions and maintenance of all and y the chd and chn of the body of him the sd T. D. begotten d to be begotten [or. than and except an eldest or only son] *and this Indre furr Witnesseth* that in furr pursuance &c. and r the better securing the paymt of the sd sum of £ and in nson of the sum of 10s. to the sd T. D. in hand pd by the sd *rustees*) He the sd T. D. by force and virtue and in furr pur- ance of the sd power Hath granted limited and appted and r this his deed in writing duly exted by him and attested as d *Doth* grant &c. unto the sd (*trustees*) their exs ads and ass *ll and singr* the sd manors hnbeft parlarly mentd and de- scribed and by these prests charged with the paymt of the sd um of £ or intended so to be with their and evy of their ights members and appts and the revn &c. *To Have and to Hold* the sd sevl manors &c. hby granted &c. as afd or intended so to be and evy pt &c. with their sevl rights &c. unto the sd (*trustees*) their exs &c. from the day next beft the day of the date of these prests for and during and unto the full end and term of 1000 yrs from thence next ensuing and fully complete and ended witht impeachment for any manner of waste But nevrs upon the trusts and for the intents and purps and under and subject to the provo and condon hinaft decld and contd of and concerning the same [that is to say] *Upon Trust* that the sd (T.) or the survor of them his exs ads or ass do and shall by mtge sale demise or disposn of the sd manors and preses com- prised in the sd term or any pt thof for all or any pt of the sd term or by with or out of the rents issues or profits of the sd preses or any pt throf or by bringing actions agst all or any of the tents or occupiers of the sd preses for recovery of the rents n arrear or by all or any of the afd ways and means or by any r. ways or means whatsr as they the sd (T.) or the survor &c. hall think fit levy raise and pay the sd sum of £ for the ortions &c. [or. than and except an eldest or only son] and do id shall pay the sum of £ [being a moiety &c. of the l sum of £] to the sd A. D. or her ass on the day f this present mth in full of her pt share and propon of the sd um of together with int for the sd sum of £ after the te of 4l. for each sum of 100l. for the yr to be computed from e sd day of and do and shall by the ways &c. levy

No. CIV.—2.
*To raise
Portions.*

Further testa-
tum.

Demise to trus-
tees.

Habendum.

Term of 1000
years.

Sec. 623.—2.
The Trust
Parties.

Proviso for
cases of term.

Covenant to
pay interest &c.

shall and pay the sum of £ the remr of the sd sum of £
with int ther at the rate &c. to all and evy the chd &c. [or. than
and except an eldest or only son and also or. than and except
the sd A. D.] at such time or times in such pts &c. as the sd
T. D. by any deed or deeds in writing with or witht power of
revoccon to be by him sealed &c. shall direct limit or appt Pro-
vided never and it is hby decld and agrd by and betn the sd
pties to these prests that if the sd T. D. or such or. psn or psns
to whom the next est of frechd and inhance of and in the sd
manors &c. comprised in the sd term of &c. in revn or remr ex-
pectant on the determin. of the sd term shall for the time being
belong do and shall well and truly pay or cause to be paid to
the sd A. D. her exs ads or ass the sum of £ with int for
the same at the rate as afd and do and shall pay or cause to be
pd to the sd (T.) or the survor &c. or well and sufficiently to
their or his good liking secure to be pd the sd sum of £
the remr &c. for the portions of all &c. [other than &c. and also
or. than and except the sd A. D.] at such time &c. as shall be
directed by the same T. D. as afd And in case they the sd (T.)
and each of them and the exs &c. of each of them shall be fully
reimbursed and satisfied all costs chas and exps occasioned by
or relating to the trusts hby in them reposed and which it shall
be lful for them resply to deduct and retain out of the rents
issues and prfts of the sd preses Then and from thenceforth
the sd term of &c. of and in the sd manors &c. thin comprised
or so much thof resply as shall remain unsold or undisposed of
for the purps afd shall cease determine and be utterly void to
all intents and purps whatsr any thing hnbeft contd to the
conty thof in anywise notwg And the sd T. D. for himself his
hrs exs and ads doth covt &c. to and with the sd (T.) their exs
&c. by these prests in manner followg [that is to say] That he the
sd T. D. and his hrs or such psn or psns as shall be intitld to
the revn and remr of the sd preses expectant &c. shall and will
from time to time pay and keep down all int after the rate as
afd which shall occur or become paye for or in respect of the
sd sum of £ so hby directed to be pd to the sd A. D. from
the sd day &c. until the last-mentd sum of £ shall be
raised and pd to the sd A. D. and shall and will also pay the sd
sum of £ the remr of the sd sum of £ from such time

the same or any pt or pts thof shall become due and paye
 tue of any diron limiton or apptmt to be made by him
 l T. D. *And* also that he the sd T. D. now hath good
 full power and lful and absolute authty to charge the sd
 e mentd manors and preses with the paymt of the afd sum

No. CIV.—2
 To raise
 Portions.

Covenants for
 title.

Good right to
 charge premise

pt of the sd sum of £ Togr with such int for the
 to be pd to the sd A. D. her exs ads or ass as afd and that
 l singr the said manors &c. shall remain continue and be
 t unto and charged and chargbe with the paymt of the

a of £ and the int thof in manner afd and accdg to
 ie intent and meaning of these prests *And* that free and

Free from in-
 cumbances.

For further as-
 surance.

&c. (see *post*, RELEASES) *And furr* that the sd T. D. or
 s and all and evy or. psn or psns who now are or claim
 o shall or may have or claim any este &c. shall and will
 time to time and at all times hrafr upon evy reasone
 t to be made for that purpe but at the proper costs
 as in the law of the sd T. D. or of such psn or psns in-
 &c. make do and exte or cause to be made done or exted
 d evy such furr and or. lful or reasone act or acts &c. for
 etter more perfect and absolute subjecting and charging
 l sevl hnbefe mentd manors and preses and evy of them
 vy pt and pcl throf to and with the paymt of the sd sum

and int thof and evy pt thof resply and for the better
 ig and apptg the sd sum of £ and the int thof and
 t thof resply as afd to be pd to the sd A. D. her exs ads
 ss in manner hnbefe mentd accdg to the true intent and
 ing of these prests

witness &c. see *ante*, No. XLVI.



*Assignment of an Annuity, the Consideration Money for cer-
 n Premises conveyed by Indenture of even Date, and a
 m of 500 years for securing the same, see PURCHASES.*



*Assignment of Money and Bank Annuities upon Security for
 Money lent Upon Trust, to repay the Money and replace the
 ch, see post, MORTGAGES.*



Appointment and Assignment of Money, upon Trust for securing a Sum advanced, and Interest, see post, MORTGAGES.



Appointment and Release under a Power of Sale, see post, PURCHASES.



Appointments by Will, see post, WILLS.



APPOINTMENTS DELEGATING AN AUTHORITY.

Obs. As to appointments of this description, see Pref. sects. 9—13.



Appointment of an Agent, see post, LETTERS OF ATTORNEY.



Appointment of Arbitrators, see post, ARBITRATOR.



No. CV.
Chaplain.

No. CV.

Appointment of a Chaplain.

Liberty to have
chaplains.

Obs. 1. By the 21 Hen. 8, c. 13, archbishops are authorized to have eight chaplains; dukes and bishops six; marquises and earls five; viscounts four; barons, knights of the garter, and lord chancellor, three; duchesses, &c. two; the treasurer and comptroller of the king's household, the king's secretary, the dean of the chapel, the king's almoner, and the master of the rolls, two; the chief justice of the King's Bench, and the warden of the Cinque Ports, one; each of whom may have a licence or dispensation to keep two benefices; but see now 1 & 2 V. c. 106, Dig. p. ii. tit. CLERGY (PLURALITIES). By 28 H. 8, c. 13, s. 2, the judges of the King's Bench, of the Common Pleas, the chancellor and chief baron of the Exchequer, the king's attorney and solicitor general, and by the 33 H. 8, c. 28, the chancellor of the duchy of Lancaster, &c. may each of them have one chaplain, having one benefice with each. And by these Acts, chap-

so appointed are exempted from residence, so long as they shall and dwell without any fraud, &c. or covin in any of the saidurable households. It is necessary, by 21 H. 8, c. 13, s. 22, that appointment should be sealed as well as signed.

No. CV.
Chaplain.

A stamp of 2*l*.

Stamp-duty.

Now all Men by these Prests That I the Right Hon. &c. have constituted and apptd and by &c. do admit &c. the A. B. of &c. to be my domestic chaplain and to have hold enjoy all and singr the benefits liberties privileges and advantages due and of right granted to the chaplains of nobility by laws and statutes of the realm *In witness* &c. see *ante*, No. VI.

No. CVI.

No. CVI.
*Of a Chaplain
by a Bishop.*

Appointment of a Chaplain by a Bishop.

Know all &c. see last Precedent That we by divine permission Bishop of for and in conson of the learning good life d sincere religion of our beloved in Christ A. B. clerk have minated &c. and do &c. In testimony whof we have put our d which we use in this case to these prests and have subscribed the same this day of in the yr of our Lord rist and in the yr of our translation &c.

No. CVII.

No. CVII.
*Of a Parish
Clerk.*

Appointment of a Parish Clerk.

Obs. 1. By the common law and custom of the realm, incumbents the right of nominating the clerk of the parish, Gibs. 214; un- where the parishioners claim the right by prescription of electing pen vestry, *Jermyn's case*, Cro. Jac. 670; see further 3 Burn, L. Phillimore's ed. 82 *et seq.*

Right of ap-
pointment.

If under hand only, and the fees only amount to 50*l*. no stamp ars to be necessary.

Now &c. see *supra*, No. CV. That I (*appointor*) of &c. nominated ordained and appointed and by &c. do nominate &c. to be the parish clerk of the parish church of &c. in

No. CVII.
Of a Parish
Clerk.

the room stead and place of the sd And the sd office to have and exte by himself his deputy or deputies for and during the term of his natural life and during the same time to have perceive receive and take all such wages fees dues duties profits and emoluments as belong and are and shall be due to the sd office and of right ought to belong to the same in as large and ample a manner as the sd or any of his predecessors clerks of the sd parish of have had or ought to have had as due and accustomed to the sd parish clerk *In witness &c. see ante, No. XLVI.*



No. CVIII.
Of a Deputy
Steward.

No. CVIII.

Appointment of a Deputy Steward.

Obs. As to the appointment of a deputy by another deputy, see Pref. sect. 13.

Know &c. see, ante, No. CV. That I (appointor) of &c. steward of the manor of in the county of by virtue of the power and authority given to me by C. D. of &c. lord of the sd manor Do by these prests constitute and appt E. F. of &c. my deputy or under-steward of the sd manor during my pleasure Given under my hand and seal this day of 18



No. CIX.
Of Executors.

No. CIX.

Appointment of Executor under a Power in a Will.

To All to whom these Prests shall come We A. B. of &c. and C. D. of &c. send greeting (recite will and death of the executors) Now know ye that we the sd A. B. and C. D. surviving exs of the last will and testament of the sd (testator) do and each and evy of us doth pursuant to the power and authority to us given in and by the sd will of the sd (T.) as afd as far as in us lieth and we lfully can and may by these prests choose nominate and appoint E. F. of &c. and G. H. of &c. to be exs of the will of the sd (T.) in the room and place of the above named executors K. L. and M. N. to act in conjunction with us the sd A. B. and C. D. in all matters and things retating to the sd

shp And we the sd A. B. and C. D. do and each of us doth
 / give and appt unto the sd E. F. and G. H. all and evy the
 ver and authority which we may can or ought to give and
 mit by virtue of the will of the sd (T.) to any psn or psns
 he room of the above named K. L. and M. N. togr with the
 wances mentioned in the sd will for their and each of their
 ble and care in acting in the exon of the sd will for so long
 e as they the sd E. F. and G. H. or either of them shall act
 rein *In witness &c. see ante, No. XLVI.*

No. CIX.
Of Executors.

No. CX.

Appointment of a Gamekeeper.

No. CX.
*Of a Game-
 keeper.*

Obs. 1. The 1 & 2 W. 4, c. 32, by which the game laws are con-
 lidated into one Act, provides, in s. 13, 14, that any lord of a manor
 y appoint, in writing, under his hand and seal, one or more person
 persons as a gamekeeper or gamekeepers, to preserve and kill the
 me within the limits of such manor, for the use of such lord, and
 thorize such gamekeeper or gamekeepers to seize and take all
 gs, nets, and other engines; and by s. 16, it is provided, that such
 pointments must be registered with the clerk of the peace for the
 nty. See further Dig. p. iii. tit. GAME.

2. A stamp of 1l. 15s.

Stamp.

Know all Men by these Prests That I A. B. of &c. lord of the
 anor of in the co of do hby nominate and appoint
 . D. of &c. to be gamekeeper during my pleasure of and in my
 manor and all the royalties rights members and apts there-
 to belonging and for my use to keep and preserve the game
 om time to time and to kill them for my use under my orders
 d directions and to take seize and detain all guns dogs ferrets
 ts snares wires and other engines whatsr for the unlawful
 king and destroying the sd game found in or upon the sd
 anor *And furr* I do hby give and grant unto him the sd
 . D. during my pleasure full power and authy to do all and
 y other lful act which may be requisite and necessary for the
 reservation or pursuit of the sd game *In witness &c. see ante,*
No. XLVI.

Signed sealed and delivered being first } A. B.
 duly stamped in the presence of }
 G. H.

APPOINTMENTS OF GUARDIANS.

- | | |
|--|--|
| 1. <i>Appointment of Guardians by Father.</i> | 3. <i>Appointment of Guardian by Infant.</i> |
| 2. <i>Only in case of legitimate Children.</i> | 4. <i>Stamp-duty on Appointment.</i> |

Appointment
of guardians by
father.

SECT. 1. The appointment of guardians in writing is made in two cases, namely, by the father or by the infant. By the 12 Car. 2, c. 24, the father, although under the age of twenty-one, may by deed or will, attested by two witnesses, appoint who shall be the guardians of his children after his decease; and guardians so appointed are called testamentary guardians, whose appointment shall be effectual against all claiming as guardians in socage or otherwise, 2 Fonbl. Equit. 247, 5th ed. It is immaterial by what words the guardian is appointed, provided the father's intention is sufficiently apparent, Swinb. Pt. 3, c. 12. As to appointments by the father when an infant, see Dig. p. iii. tit. GUARDIAN AND INFANT.

Only in case of
legitimate chil-
dren.

2. A father cannot by law appoint a guardian of children not born in wedlock, but the Court of Chancery will for the most part appoint the persons named in the father's will to be guardians, 2 Cox. Ca. 46.

Appointment of
guardian by
infant.

3. When an infant has no such property as attracts guardianship, and is destitute of any lawful guardian, by the appointment of the father or otherwise, he may at any age appoint such person as he may think proper to be the guardian of his estate and person. Also after the age of fourteen, when the custody of the guardian by socage terminates, the minor is at liberty, for want of a guardian by the father's appointment, to elect one for himself; and in some instances has been called upon by the Court of Chancery so to do, Fonbl. Eq. 235, 5th ed.

Stamp.

4. If the appointment be, as it usually is, under hand and seal, and delivered as a deed, the stamp of 35s. is chargeable upon it.

No. CXI.

By a Father.

No. CXI.

Appointment of a Guardian by Father.

Obs. As to the appointment by the father, see sect. 1 and 2; and as to the stamp, see sect. 4.

Know all Men by these Presents That I A. B. of &c. have committed and disposed and by these presents do commit and

se unto (*wife*) my wife the custody tuition and education
children) my children from and after my dece until such of
 as are sons shall attain the age of 21 and such of them
 daughters shall attain that age or marry And in case my sd
 shall happen to die before me or after my dece should
 again before my sd children should attain their respective
 of 21 or marry as afd then and in such case I do commit
 dispose unto G. D. such care and guardianship and beg of
 G. D. to take upon him such charge for the good of my
 n *In witness &c.* see *ante*, No. XLVI.

No. CXI.
Of a Guardian.

No. CXII.

No. CXII.
By an Infant.

Appointment of a Guardian by an Infant.

s. As to appointment by the infant, and the stamp, see *supra*,
 8, 4.

Now all Men by these Prests That I A. B. son and heir of
 . of &c. decd being of the age of fourteen years and upwards
 elected nominated and apptd and by these prests do elect
 mate and appt E. F. of &c. guardian of my psn and este to
 rte and perform during my minority all such acts matters
 things whatsr for me and on my behalf as a guardian may
 ight to do And I do hby promise to be ruled and governed
 him in all things touching my welfare (a) *In witness &c.*
ante, No. XLVI.

Appointment of a Protector of a Settlement, see post, FINES
 AND RECOVERIES.

) If it be necessary, add, " And I do also hby authorize and empower the
guardian) to enter upon and take possession of all and evy my messes
 ents lds heredit and preses whatsr situated lying and being in the co of
 or elsewhere and to let the same and take the rents and profits thof
 g the term afd And whater he shall lfully do in the preses I do hby pro-
 te confirm."

No. CXII.—2.
Of a Receiver.

No. CXII.—2.

Appointment of Receiver to secure Rents to Mortgagee.

Modes of ap-
 pointing a
 receiver.

Obs. 1. The appointment of a receiver, if made by deed, may either be by way of power of attorney or by way of demise to the receiver. The first, which is the more usual form, is frequently made in the mortgage deed under which the receiver is to act; but the more convenient mode is by a separate deed. Appointments by way of demise have this convenience, that they enable the receiver to distrain either before or after the decease of the party appointing.

Stamp.

2. A stamp of 1*l.* 15*s.*, and a further progressive duty of 1*l.* 5*s.* for every entire quantity of 1000 words over and above the first 1000.

Recital of mort-
 gage in fee.

This Indre made &c. see *ante*, No. LXXXV. Betn (*mortgagor*) of &c. of the first pt (*mortgagee*) of &c. of the second pt and (*receiver*) of &c. of the third part *Whas* by indres of lease and release the lease bearing date the day next before the day of the date of the rele and the rele bearing even date with these prests and made betn the sd (*mortgagor*) of the one pt and the sd (*mortgagee*) of the or. pt in conson of the sum of £ pd to the sd (*mortgagor*) by the sd (*mortgagee*) he the sd (*mortgagor*) did grant bargain sell release and confirm unto the sd (*mortgagee*) and his hrs *All those &c. (parcels) To Hold* the same unto and to the use of the sd (*mortgagee*) his hrs and ass for ever subject nevss to a provo thin contd for the redemption of the sd heredit and preses on paymt by the sd (*mortgagor*) his hrs exs ads or ass unto the sd (*mortgagee*) his exs ads and ass of the sum of £ and int for the same after the rate of £ per cent. on or at the days or times and in manner thin expsd

Agreement to
 appoint receiver.

and decld *And Whas* upon the treaty for the sd loan it was agd that so long as the sd principal sum or any pt thof shd remain upon the secty of the sd messes farms lds and heredit comprised in the sd in pt recited indre of rele a receiver shd be apptd upon the trusts and for the ends intents and purps hnafter expsd and that the sd (*R.*) should be the receiver immly apptd for that purpe *Now &c.* in pursuance &c. and in conson of the preses he the sd (*mortgagor*) with the consent and approbation of the sd (*mortgagee*) testified by his being a pty to and exting these prests *Hath* made constituted and apptd and in his place put and deputed and by these prests *Doth &c.* the sd (*R.*) his

Power of at-
 torney.

receiver agent and true and lful atty in the name or names of the sd (*mortgagor*) and (*mortgagee*) for them and for the uses and purposes after mentioned to ask demand collect and rece all and evy the rents issues and profits of all and singr the sd messes farms and tents and hereds comprised in the sd in pt recited indre and from all and evy psn and psns liable to pay the same as and when the same shall from time to time become due and payable And in deft of paymt thof or of any pt thof to take and use all such lful means for recovering the sd rents issues and profits or any of them or any pt thof by action suit distress entry or orwise as shall be thought necessary And generally to do perform and exte all other acts matters or things needful and requisite for collecting and receiving the sd rents and prfts as fully and effectually to all intents and purps as the sd (*mortgagor*) could or might himself do if he were present (a) And the sd (*mortgagor*) doth hby give and grant unto the sd (*R.*) good right and full power one or more atty or atties for all or any of the purps afd to appt and nominate and the same at pleasure to remove and or. or ors. to substitute in his or their place or places he the sd (*mortgagor*) allowing ratifying and confirming and agreeing to allow ratify and confirm all and whatsr the sd (*R.*) or his atty or atties shall lfully do or cause to be done in or concerning the preses under or by virtue of these prests And the sd (*mortgagor*) doth hby order and direct all and evy the tenant and tenants and occupiers of the sd messes and tents farms lds and hereds and preses to pay unto the sd (*R.*) or to his substitute or substitutes all and singr the rents and prfts and doth hby declare that the rect or refts of him or them shall be good and sufficient dischas to such tenants and occupiers for such sums as shall be therein respby ackngd to have been recd And it is hby decld and agrd by and betn the pties to these prests that the sd (*R.*) shall stand and be possessed of the sd rents issues and prfts so reserved upon the trusts and to and for the ends and purps hnaft mentd that is to say *Upon Trust* that he the sd (*R.*) shall from time to time out of the sd rents and prfts in the first place pay all taxes rates assessments and

No. CXII.—2.
Of a Receiver.

Power to ap-
point other at-
tornies.

Direction to
tenants to pay
receiver.

Declaration of
trusts.

To pay taxes.

(a) As to agent acting in his own name, see APPOINTMENTS, Pref. sect. 12.
As to the necessity of this clause, Pref. sect. 13.

No. CXII.—2. impositions whatsr taxed chagd assessd or imposed or to be taxed &c. on the sd heredit or any of them or on the owners or occupiers thof for or in respect thof or any pt thof And in the next place to pay the sd (*mortgagee*) his exs ads or ass all the int which shall from time to time become due or paye for or in respect of the sum of £ or any pt thof on or at the days or times and in the manner in the sd in pt recited indre of rele mentd and appointed for paymt of the same *And upon furr trust* by and out of the sd rents issues and prfts to retain and reimburse himself all costs chas and exps which he shall have pd sustained or incurred in or about the exon of all or any of the trusts or powers hby in him reposed togr with the sum of £ *per centum* upon the gross rents which he the sd (*R.*) shall have actually received as a compensation for his trouble in the exon of the same trusts *And* from and after the several paymts the sd (*R.*) do and shall from time to time pay the clear residue and surplus of the money which shall have come to his hands for or in respect of the sd rents issues and prfts unto the sd (*mortgagor*) his hrs exs and ads or such psn or psns as he or they shall direct or appt *And* the sd (*mortgagor*) doth hby for himself his hrs exs ads and ass covt promise and agree with and to the sd (*mortgagee*) his exs ads and ass by these prests in manner followg that is to say That he the sd (*mortgagor*) shall not nor will witht the consent in writing of the sd (*mortgagee*) his exs ads or ass first had and obtained revoke the powers and authorities hby given to the sd (*R.*) or any future receiver or do or knowingly suffer to be done any act deed matter or thing whby the sd powers or authties shall or may become void or of no effect or whby the sd (*R.*) shall or may be hindered or obstructed in collecting receiving or recovering all or any of the sd rents issues or prfts of the sd heredit and preses and applying the same upon and for the trusts and purps afd during such time as the sum of £ or any pt thof shall remain and continue on the security hnbefe mentd *And furr* That in case the sd (*R.*) shall by death or or. disability be disqualified or rendered incapable to collect and rece the sd rents and prfts or shall refuse or neglect to proceed therein in manner afd or shall orwise misbehave himself in the trusts hby in him reposed whilst the sd sum of £ or any pt thof shall remain and continue on the

No. CXII.—2. Of a Receiver.

To pay interest.

To reimburse himself.

To pay surplus to mortgagor.

Covenant by mortgagor not to revoke power;

and to join in appointing another receiver.

I secty then and in any of the cases afd he the sd (*mortgagor*) No. CXII.—2.
 hrs exs and ads shall and will join with the sd (*mortgagee*) Of a Receiver.
 exs ads and ass in removing the sd (*R.*) if then living from
 employment and shall and will duly constitute and appt
 ch or. fit psn or psns in the place of the sd (*R.*) as the sd
 (*mortgagee*) his exs ads or ass shall nominate or approve to
 lect rece and pay the sd rents and prfts upon and for the
 sts and purps hnbefe mentd And so from time to time when
 d so often as the like case shall happen until the sd sum of
 and all the int for or in respect thof shall be fully pd to
 e sd (*mortgagee*) And in case the sd (*mortgagor*) his hrs exs In case of neg-
 s or ass or any of them shall refuse or neglect so to do for the lect mortgages
 ace of three calendar mths next after request shall have been to appoint.
 ade unto him or them in writing by the sd (*mortgagee*) his exs
 ls or ass for that purps then and in such case and as often as
 e same shall happen it shall be lful for him the sd (*mortgagee*)
 s exs ads or ass witht the consent or concurrence of the sd
 (*mortgagor*) his hrs exs ads or ass to constitute and appoint
 me fit psn to collect rece and pay the sd rents and prfts upon
 e trusts and for the purps afd with such salary or emolument
 as his care and trouble as he the sd (*mortgagee*) his exs ads or
 s shall think fit not exceeding one shilling in the pound on
 e gross rental for the time being *Provided always* and it is Clause of in-
 by decld and agd that the sd (*mortgagee*) his exs ads or ass demnity.
 hall not in any case be chagd or chagbe with or answerable for
 ny loss misapplication or nonapplication of the rents issues Mortgagee not
 nd prfts of the sd messes tents farms lds and hereds or any pt to be answer-
 hof by reason of any deft neglect or breach of trust of the sd able for losses
 (*R.*) or any future receiver so to be apptd as afd but that such occasioned by
 oss misapplication or nonapplication as also the salary of the sd receiver.
 (*R.*) shall be wholly borne by the sd (*mortgagor*) his hrs exs ads
 nd ass *Provided also* and it is hby furr decld and agrd by the Covenant from
 pties to these presents that until the int on the sd sum of £ mortgagee that
 shall be in arrear and unpd by the space of calr mths next mortgagor may
 after the same shall have become due all and singr the rents receive rents
 issues and prfts of the sd messes and tents farms lds hereds and and profits until
 preses shall and may be pd and retained by the sd (*mortgagor*) default.
 his hrs and ass to and for his and their own proper use and
 bent and that until that time the sd (*R.*) and any future receiver

No CXII.—2.
Of a Receiver.

Covenant from
receiver that he
will faithfully
collect and pay
rents &c.

shall not act under or exercise any of the powers and authties given unto him as afd any thing hin contd to the contrary notwithstanding And the sd (R.) doth hby for himself his hrs exs and ads covt promise and agree with and to the sd (*mortgagee*) and also with and to the sd (*mortgagor*) that he the sd (R.) shall and will from time to time so long as he shall be and continue the collector and receiver of the sd rents issues and prfts use his utmost endeavours faithfully to collect and rece the same and shall and will truly and punctually pay and apply all such sums of money as shall from time to time be collected and recd by him the sd (R.) by virtue of and under the afd power and authority according to the trusts hby in him reposed *In witness &c.* see No. XLVI.



No. CXVIII.

*Of a Steward of
a Manor.*

No. CXVIII.

Appointment of a Steward of a Manor.

May be by
parol.

Obs. The appointment of a steward by the lord or lady of a manor solely seised of the manor, if notified by parol, is as effectual in all points as if made by deed; but a patent is necessary for making stewards to the King's or Queen's manors; and a patent or deed in the case of a corporation aggregate, Co. Cop. s. 45; 4 Co. 26; Co. Litt. 61, b; Gilb. Ten. 221.

Know all Men by these Prests That I (*lord or lady*) have given and granted and by these prests do give and grant unto (*steward*) of &c. gent. the office of steward of my manor of in the co of And I have constituted and apptd and do constitute &c. him the sd (S.) steward of the sd manor to keep and hold all courts belonging to the sd manor at the usual times the same have been accustomed holden and at such other times as he the sd (S.) shall think fit and expedient *To Have* hold and enjoy the sd office of steward and to take and rece all and singr the fees and prfts thereto belonging by him the sd (S.) or his sufficient deputy during my will and pleasure (*or* "during the will and pleasure of me my hrs and ass" *or* "during the life of the sd steward," *as the case may be.*) *In witness &c.*



No. CXIX.

Appointment of New Trustees by Virtue of a Power in a Settlement.

No. CXIX.
Of Trustees.

Obs. 1. By the 11 G. 4 & 1 W. 4, in cases of disability, or where trustees are out of the jurisdiction, the Court of Chancery is empowered to appoint a trustee for the purpose of conveying any real estate, or (by ss. 9, 10) to assign any leasehold estate or stock; and by s. 22) it is also empowered in certain cases to appoint new trustees summarily on petition; but the court will not exercise this power except in clear cases, *In the matter of Nicholls, Minors*, Lloyd and Gould, 17 (Cases temp. Sugden); *In the matter of Gerald Fitzgerald*, Petitioner, ib. 20; *Whitley*, Petitioner, *Fisbourne*, Respondent, ib. 23(a); see further Appendix, No. IV.; Dig. p. ii. tit. COURTS [EQUITY).

Appointment by Court of Chancery.

2. By the 29 C. 2, c. 3, s. 9, all grants or assignments of any trusts shall be in writing signed by the party granting or assigning the same, or else are utterly void.

3. A common deed stamp of 1l. 15s. and a further progressive Stamp-duty of 1l. 5s. for every 1080 words above the first 1080.

This Indenture &c. see *ante*, No. LXXXV. *Grant of an Annuity.* Betw (surviving trustees) of &c. of the first pt (husband) of &c. and M. his wife of the second pt and (new trustee) of &c. of the third pt *Whas (b)* by indres of lease and release bearing late respively the days of which was in the yr 18 the release being of pts and made or expssd to be made betn &c. and purporting to be a settlement made previously to the marre then in contemplation and which soon after took effect betn the sd (husband and wife) certain freehold lds and hereds thin parlarly described were conveyed and assured to the sd (old trustees) their hrs and ass upon the trusts thin decl'd concerning the same In which sd indre is contd among other things a provo whby it is decl'd and agd that in case the sd (O. T.) or any or either of them or any succeeding trustees to be apptd in pursuance thof shd die or be desirous to quit and be dischagd from the trusts thby in them reposed or shd neglect or refuse or

Recital of deed of settlement creating the power.

(a) Sugden's Acts, by Jemmett, 177, 2nd edit.

(b) As to the necessity of this recital, see Pref. sect. 4.

No. CXIX.
Of Trustees.

be incapable to act in the sd trusts it shd and might be lful to and for the survors or survivor of them or or. or ors. of them the sd (T.) by and with the consent of the sd (H.) and M. his wife or the survivor of them testified in writing under their hand and seals and after the dece of the survivor of them of his or their own proper authority to nominate and appt one or more new trustee or trustees in the room of such trustee or trustees so dying or desiring to be dischagd from or neglecting or refusing to act in the sd trusts and that the survivor or or. trustee or trustees as afd shd do such acts deeds matters or things as shd be necessary for transferring and vesting the trust preses respively in him or them and such new trustee or trustees so as that the same shd and might be legally and effectually vested in such new trustee or trustees And that he or they shd and might act in the exon of the sd trusts as fully and effectually in all respects as if he or they had been originally nominated and apptd And *whas* the sd (*resigning trustees*) are desirous to give up and be dischagd from the trusts reposed in them by the sd in pt recited indre And *whas* the sd (O. T.) at the request of the sd (H.) and M. his wife and on the acceptance of the sd (N. T.) have agd to appt them the sd (N. T.) in the place and stead of the sd (*resigning T.*) in the manner hnaftir mentd Now *this Indre witnesseth* that in and by virtue and in exercise of the power and authority to the sd (H.) and M. his wife for that purpose in and by the sd in pt recited indre given and reserved they the sd (O. T.) by and with the consent and approbation of the sd (H.) and M. his wife testified by their being parties to and signing and sealing these prests do nominate and appt the sd (N. T.) to be trustees in the room and stead of the sd (R. T.) to act with the sd (O. T.) in the trusts mentd and decl'd in and by the hnbfe recited indre of settlmt And they the sd (O. T.) do direct and appt that they the sd (H.) and M. his wife do also direct and appt the sd (R. T.) to make and join in making such transfer and transfers of the sd trust preses as shall or may be necessary or requisite for vesting the sd preses in the sd (N. T.) jointly with the sd (O. T.) Upon the Trusts and for the intents and purps and under and subject to the provos and agts in and by the sd hnbefe recited indre of settlement expssd and decl'd of and concerning the same or such of them as are now existing

undetermined and capable of taking effect or as near thereto as may be (a) *In witness &c.* see *ante*, No. XLVI.

No. CXIX.
Of Trustees.

Appointments in Deeds, see INDEX TO THE PRECEDENTS.

(a) The conveyance to the new trustees may be made by a further *testatum*, if of freeholds, as follows: "*And this Indre furr witnesseth* That for the purpose of vesting the sd lds and hereds in the sd (*new trustees*) in pursuance and for the purps of the sd in pt recited &c. They the sd (*O. T.*) in conson of 5s. pd to them by the sd (*N. T.*) *Have* at the request and by the direction and apptmt of the sd (*H.*) and M. his wife testified &c. bargained sold released and conveyed and by these prests *Do* bargain &c. and also in conson of 5s. pd to the sd (*H.*) and M. his wife by the sd (*N. T.*) They the sd (*H.*) and M. his wife *Have* and each of them *Hath* granted bargained sold released and confirmed and by &c. *Do* and each of them *Doth* grant &c. unto the sd (*N. T.*) in their actual posson &c. and to their hrs and ass *All &c. To Have and to Hold* the sd messes &c. unto the sd (*N. T.*) *to the use* of the sd (*O. and N. T.*) upon and for such trusts ends intents and purps and subject to such powers provos agrts and indemnities as in and by the sd in part recited indre &c. are expsd and decl'd of and concerning the same to and for the end intent and purpe that they the sd (*N. T.*) may be enabled to perform and exte all such trusts and exercise all such powers as were and are in and by the sd in pt recited indre vested in and granted to the sd (*O. T.*) so far as the nature and circumstances of the case will permit. And the sd (*O. T.*) and each of them &c." (*doth severally &c. covenant that they have done no act to incumber.*)

If the trust be as to leaseholds or other personalty, then, by a further *testatum*, the estate may be assigned by the old trustees to a nominal trustee "*To Hold* unto the sd (*T.*) for all the residue of the sd term &c. *Upon Trust* *Verus* that he the sd (*T.*) shall forthwith reassign and transfer the sd messe &c. unto the sd (*N. and O. T.*) their &c. to be held by them and the survivor of them &c. upon the trusts and to and for the intents" &c. *as above*. And a re-assignment by the nominal trustee in the usual terms, may be indorsed on the deed. If it be as to money in the funds, then, after reciting that the Bank Annuities in settlement have been transferred into the names of the new trustees &c. say "*That this Indre furr witnesseth* that it is hby covtd concluded decl'd and ag'd by and betn the pties hto and in parlar by and in behalf of the sd (*N. T.*) that the sd principal stock or sum of £ 3 per cent. &c. hnbefe mentd to be transferred unto and to be now standing in the jt names of the sd (*O. and N. T.*) was so transferred unto them and that they the sd (*O. and N. T.*) their exs and ads shall and will henceforth stand and be possessed of and interested in the same upon the trusts and to and for the ends &c." *as above*.

APPORTIONMENT.

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| <ol style="list-style-type: none"> 1. <i>Definition and Application of Apportionment.</i> 2. <i>Apportionment of Rents.</i> 3. <i>Apportionment of Contracts.</i> 4. <i>Apportionment of Conditions and Covenants.</i> 5. <i>Apportionment of Commons.</i> | <ol style="list-style-type: none"> 6. <i>Apportionment of Annuities and Dividends.</i>
 <i>Other periodical Sums.</i>
 <i>Maintenance apportionable.</i>
 <i>Interest on a Mortgage not so.</i>
 <i>Policies of Insurance not so.</i> |
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Definition and application of apportionment.

SECT. 1. Apportionment, or setting apart or dividing into set portions for particular purposes, is applicable to several matters in law,—as to rents, contracts, conditions, covenants, commons, annuities, dividends, mortgages and other payments, at stated periods. Some of these things are apportionable by act of law, if not by the act of the party; some, as interest in mortgages and sums payable on policies of insurance, are not apportionable at all; others, as annuities, &c., are apportionable, not at common law, but by statute, see further, *infra*.

Apportionment of rents.

2. Apportionment of rent is in two ways: First, in respect to the parties intitled to receive or bound to pay the rent, see *post*, COVENANTS, LEASES. Secondly, as to the particular portion of time for which rent is payable after the death of a party or otherwise.

By the old rule of law, where a tenant for life granted a lease for years payable half-yearly, and died in the interval before any half-yearly payment became due, his executors and administrators were not intitled to the rent coming due, but it fell into the land (see ANNUITY, Pref. sect. 3). By the 11 G. 2, c. 19, sect. 15, it is provided that where any tenant for life dies before or on the day on which any rent is reserved upon any demise which determines at the death of such tenant, his executors or administrators may recover the whole, or if before the day, a proportion of such rent, according to the time the tenant lived, of the last year, half-year, quarter or other time in which the rent was growing due. Under this statute it was held that the representatives of a tenant in tail were intitled to apportionment, 2 B. C. C. 662, and cases there cited, 8 Ves. 311; but whether a tenant *pur autre vie* was within the statute, appears not to have been settled, *Wyckham v. Wyckham*, 3 Taunt. 331. But now by the 4 & 5 W. 4, c. 22, amending and extending the former act, rents reserved on leases determining on the death of the person making them, although not strictly tenant for life, or on the death of tenant *pur autre vie*, are to be apportionable according to the provisions of that Act.

3. As a rule, where a contract is entire, it cannot be split, 3 Vin. bridg. tit. APPORTIONMENT; therefore, where a party agrees to deliver a certain quantity of goods within a certain time, he cannot bring an action for the amount of any part, but must wait until the whole is delivered, *Waddington v. Oliver*, 2 N. R. 61, unless the buyer consents to keep the part, when the value thereof may be ascertained, *Shipton v. Casson*, 5 B. & C. 378, recognized in *Oxenle v. Wetherell*, 9 B. & C. 386. So where a party engages to do specific work for a specific sum, he must complete the work before he can recover the sum agreed on, *Sinclair v. Bowles*, 9 B. & C. ; but where a shipwright enters into a general engagement to repair a ship, he may, on having done a part, refuse to proceed until he is paid for the part completed, *Roberts v. Havelock*, 3 B. & Ad. 4, distinguishing this from the preceding case; so formerly, where a party agreed with a builder to build a house according to a given plan, and deviations were afterwards made, such deviations formerly invalidated the whole contract, and enabled the builder to make his own charges, without regard to any contract; but now he can in such case recover only on a *quantum meruit* in respect of the deviations, *ante*, No. XLVI.; so formerly shipowners were liable to the full extent of any loss or damage; but now by several statutes the liability is limited to the value of the ship and the amount of the freight; and where there are several sufferers, the compensation to them is apportioned to their several losses, see Dig. p. iii. tit. SHIPPING. Seamen's wages are not apportionable, see Dig. p. iii. tit. SEAMEN.

Apportionment.

Apportionment of contracts.

4. Conditions, being entire, are for the most part not apportionable except where they are so by act of law, see *post*, LEASES; so also as to covenants for title or covenants in leases, see *post*, LEASES.

Apportionment of conditions and covenants.

5. If a man purchase part of the land, wherein common appendant is to be had, the common shall be apportioned, because it is of common right, Hob. 235; *Tyrringham's case*, 4 Co. 37; *sed secus* as to common appurtenant or any other common whatsoever, 1 Inst. 122 a.

Apportionment of commons.

6. By sect. 2 of the abovementioned Act, 4 & 5 W. 4, c. 22, its provisions are extended to all rents, annuities, and other sums coming due at fixed periods, which are to be apportioned in like manner. This was doubtless intended to apply to every case where an annual sum determines on the death of the person interested, whether grantor or grantee; but as it is not stated in express terms, it may be prudent to insert the usual stipulation in an annuity deed, see *infra*, No. CXX.

Apportionment of annuities, &c.

Although before this Act, there were several periodical payments which were not apportionable, yet the case of maintenance for infants was excepted, and it was held in that case that a party was intitled

Other periodical sums. Maintenance, &c. apportionable.



- Apportionment.* to a proportional part of his annuity for the time between the last half-yearly day of payment and his attaining twenty-one, *Weigall v. Brome*, 6 Sim. 99, see further, Dig. p. ii. tit. APPORTIONMENT; so interest on mortgages was held to be apportionable; but that was rather because interest on a mortgage is in fact due from day to day, and therefore not properly a periodical payment, *Edwards v. Warwick (Countess)*, 2 P. Wms. 276.
- Interest on a mortgage.*
- Policies of assurance.* By sect. 3 of the 4 & 5 W. c. 22, annual sums due on policies of assurance are not to be apportioned.

No. CXX.

No. CXX.

Apportionment of Annuity.

And in case the sd (*grantor* or *grantee*, as the case may be) shd die in the interval betn any of the sd quarterly days of paymt, then also a proportionate part of the sd annty for the time which at the dece of the sd (*grantor*) shall have elapsed of the quarterly paymt growing due.

Apportionment of Rent &c., see *post*, LEASES, also INDEX TO PRECEDENTS.

APPRENTICESHIP.

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|---|---|
| 1. <i>Definition of an Apprentice.</i>
2. <i>Statutory Provisions as to Apprentices.</i>
<i>Qualification to be an Apprentice.</i>
3. <i>Articles of Apprenticeship by Indenture.</i>
<i>By Deed.</i> | 4. <i>Inrolment of Indentures.</i>
5. <i>Stamp Duty on Indentures.</i>
<i>Exemption of Parish Indentures.</i>
<i>Premium actually paid.</i>
6. <i>Infant cannot bind himself.</i>
7. <i>Apprenticeship how assignable.</i> |
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Definition of an apprentice.

SECT. 1. The word apprentice, from *apprendre*, to learn, signifies a learner of a trade; therefore, the covenant by the master to teach the other a trade, and the latter was to do nothing ulterior to the employment in that trade, was held by Ld. Ellenborough to be contract *apprendre*; in the true sense of the word, it constituted an

apprenticeship within the meaning of the legislative expression, *R. v. Inhab. of Rainham*, 1 E. 581; Chitt. on App. 24.

2. By the 5 Eliz. c. 4, all persons were prohibited from following any trade, who had not served an apprenticeship of seven years; but this and other regulations respecting the qualifications of persons entitled to take and become apprentices &c. have since been repealed; first, by the 12 A. st. 2, c. 3, sect. 9, as to distillers of brandy from British malt; by the 17 G. 3, c. 55, sect. 5, as to hatters and felt-makers; and generally by the 54 G. 3, c. 96, which enacts that any person may take or become an apprentice, although not according to the provisions of the 5 Eliz. c. 4. Other statutes have likewise been passed, relative to apprentices to particular trades and professions. The 42 G. 3, c. 73; 1 & 2 W. 4, c. 39; 3 & 4 W. 4, c. 103, contain many regulations for the purpose of preserving the health and morals of the children put apprentices to the cotton and other manufactories. The 43 Eliz. c. 2 (amended by 32 G. 3, c. 5), and still more by 56 G. 3, c. 139, contains several provisions as to the finding out or assigning over parish apprentices to businesses in general; the 4 & 5 W. 4, c. 35, repealed and re-enacted with amendments by 3 & 4 V. c. 85 (see Dig. p. ii. tit. CHIMNEY-SWEEPERS), applies to apprentices put out to chimney-sweepers; and 5 & 6 W. 4, c. 19, to apprentices put out to the sea service. By the 55 G. 3, c. 194 and 6 G. 4, c. 133, no person shall be admitted to any examination for a certificate of his qualification to act or practise as an apothecary, unless he shall produce proof to the court of examiners of his having served an apprenticeship of not less than five years to an apothecary, or to a member of the Royal College of Surgeons in London, Edinburgh or Dublin, or to a surgeon in his Majesty's army or navy. As to articles of Clerkship, see *post*, No. CXXI.; see further Dig. p. ii. tit. APOTHECARIES, APPRENTICES.

Statutory provisions as to apprentices.

Qualification to be an apothecary.

3. One cannot be bound an apprentice without deed, 1 Salk. 68. By the 5 Eliz. c. 5, articles of apprenticeship are required to be indented, in the case of apprentices to husbandry, to owners of ships, fishers on the seas, &c.; and by the 43 Eliz. c. 2, also, in the case of apprentices put out by the parish; by the 54 G. 3, c. 46, indentures made according to the provisions of 5 Eliz. c. 4, which are otherwise valid, are to be so, notwithstanding the repeal of that statute. Although the 31 G. 2, c. 11, s. 2, has dispensed with the necessity of having the deed indented, it is still necessary that the binding should be by deed, *R. v. Inhab. of Ditchingham*, 4 T. R. 769. By the 8 Anne, c. 9, s. 35, indentures must bear date the day they are executed.

Articles of apprenticeship by indenture.

By deed.

4. In London, and some other places, the indentures must be

Enrolment of indentures.



Apprentices. indulged before the chamberlain within a year, and the apprentice must be present at the indulgence and acknowledge them, *Bac. Abr. Mast. and Ser. A. 1 Mod. 271.*

Stamp duty on indentures. By the 35 G. 3. c. 154, indentures of apprenticeship must be impressed with the following stamp duties. If the premium be under 5*l.*, 1*l.*; if 5*l.* and under 50*l.*, 2*l.*; if 50*l.* and under 100*l.*, 3*l.*; if 100*l.* and under 300*l.*, 6*l.*; if 300*l.* and under 500*l.*, 12*l.*; if 500*l.* and under 1000*l.*, 20*l.*; if 1000*l.* and under 2000*l.*, 40*l.*; if 2000*l.* and upwards, 60*l.*; and where there is no premium, and the instrument contains no more than 1000 words, 1*l.*; and if above that number of words, 1*l.* 15*s.*; and if there be two parts of the indenture, the one shall bear the abovementioned duty, which shall belong to the apprentice, and the counterpart, a duty of 1*l.* 15*s.* only. The 8 Anne, c. 9, contains several provisions respecting the stamp duty on indentures, see Dig. p. ii. tit. APPRENTICESHIP; but these have been held to be applicable only to original instruments, and not to extend to assignments of such instruments, *R. v. Ide (Inhab.)* 2 B. & A. 866.

Exemption of parish indentures.

Indentures for placing out poor children apprentices are exempt from all stamp duties. This exemption has been held not to be confined to mere compulsory bindings under the 42 Eliz. c. 2, but extends to voluntary bindings, provided the premium is paid out of a fund raised at the public charge, *R. v. St. Petrox*, 4 T. R. 196; so indentures for placing out poor children at the charge of any public charity are by the same Act exempt from stamp duty; and it has been held that where a poor person was bound apprentice at the charge of a fund bequeathed to trustees for that purpose, it was not necessary that the trustees should be parties to the indentures, *R. v. Quainton*, 2 M. & S. 338; and a private agreement without the knowledge of the trustees between the master and a third person, whereby the latter agreed to pay for the clothing and washing of the apprentice, was held not to subject the indenture to the stamp duty. But the fund must be derived from a public and not a private charity, to bring it within the exemption, *R. v. St. Matthew (Bethnal Green)*, Burr. S. C. 574; S. C. 1 Const. 661; see also *R. v. Clifton*, Burr. S. C. 697; *R. v. Takenham*, 2 Ad. & E. 528; S. C. 4 Nov. & Man. 553.

Premium actually paid.

The premium actually paid must, by the 8 Anne, c. 9, s. 39; 20 G. 2, c. 45, be truly set forth in the indenture, or otherwise it is void; *Jackson v. Warwiche*, 7 T. R. 121; but if the sum paid be less than that inserted, this will not vitiate the articles, *R. v. Inhab. of Keynsham*, 5 E. 809. But no indenture will, by 8 Anne, c. 9, s. 43, be

admitted in evidence unless the party producing the same make oath that the sum inserted therein was all that was given or contracted for, see further, Dig. p. ii. tit. APPRENTICESHIP. Apprenticeship.

6. At common law, no person under the age of twenty-one can bind himself, for an infant can be bound by no covenant, except by the custom of London, where an infant above the age of fourteen may bind himself to a freeman, and it shall be as binding as if he were of full age, 2 Roll. Abr. 305; 1 Mod. 271. An apprentice is considered as freed from all liability to serve after he comes of age; but as those who engage for the infant are held to be bound by the covenants, care must be taken that the period expire at or before the apprentice attains the age of twenty-one, *Ex parte Davis*, 5 T. R. 715; *Cuming v. Hill*, 3 B. & A. 59. The apprentice must be a party to the indenture, although put out by the parent, 2 Salk. 479. Infant cannot bind himself.

7. An apprenticeship is not assignable without the consent of the apprentice, Hob. 134; *Peck's Case*, 1 Salk. 66. By the custom of London, the executors of the master are bound, in case of his death, to place the apprentice with another master, *Peck's Case*, *ub. sup.* In cases where a master die shortly after an apprentice has been bound to him, a court of equity will decree that a larger sum shall be refunded than has been agreed to, 1 Vern. 460; and where a master becomes bankrupt it will decree, that a proportion of the premium shall be considered as a debt, and proveable under the commission, although there be no agreement to that effect, Chit. 85; *Ex parte Sandby*, 1 Atk. 149; see further, Dig. p. ii. tit. BANKRUPT. A master is entitled to the whole of the time of the apprentice, unless it be otherwise covenanted, *Thompson v. Havelock*, 1 Campb. 527; see further, as to clerkship, *post*, No. CXXII. Apprenticeship how assignable.

No. CXXI.

Indentures of Apprenticeship.

This (a) Indenture made the day (b) of in the yr of our Lord Betn (Father) of &c. of the one pt (c) (Apprentice) son of the sd (F.) of the second pt and (Master) of &c. of the third pt Witnesseth That in conson of the (d) sum of £ to the sd Master covenants to teach. Master covenants to teach.

-
- (a) When a deed indented is necessary, see *ante*, Pref. sect. 3.
 (b) Respecting the date, *ib.*
 (c) As to apprentice being a party, see *ante*, Pref. sect. 6.
 (d) As to the stamp duty, see *ante*, Pref. sect. 5.

No. CXXI.
Indentures of.

And give board
&c.

Apprentice
covenants to
serve.

Father agrees to
find clothes.

In case of
master's death
part of the fee
to be repaid.

(*M.*) in hand &c. pd the rect whof &c. he doth hby admit and acknge he the sd (*M.*) doth for himself his exs and ads covt promise and agree with and to the sd (*F.*) to accept the sd (*A.*) as his apprentice during the term of years in manner as follows That he the sd (*M.*) shall and will according to the best of his power skill and knowledge (*a*) teach the sd (*A.*) in the trade or business of [or "profession of "] and all and evy thing relating thereto *And also* shall and will during the sd term find and provide the sd (*A.*) with good and sufficient diet lodging and washing fit for an apprentice (*b*) *And* the sd (*F.*) and the sd (*A.*) for themselves severally and for their sevl exs and ads do and each of them doth covt promise and agree with and to the sd (*M.*) That the sd (*A.*) from the date hereof during the term of yrs shall and will truly and faithfully serve the sd (*M.*) as his apprentice and diligently attend to the sd business at all times his secrets keep and his lful commands willingly obey *And* shall not nor will absent himself from his master's service witht the leave of the sd (*M.*) nor do nor knowingly suffer any damage to be done to the goods monies or or. things which shall be delivered or put into his custody or care *And* shall not embezzle waste or lend them to any one witht his master's consent nor play at cards or or. unful games nor haunt or frequent taverns but in all things shall and will demean and behave himself towards his master as a good and faithful apprentice ought (*c*) *And* the sd (*F.*) doth hby furr agree that he shall and will at all times during the sd term provide the sd (*A.*) with suitable clothes both linen and woollen and all or. necessities except board lodging and washing (*d*) *And* it is hby deold and agrd by and betn the pties hereto That in case the sd (*M.*) shall happen to die in the first or second year from the date hereof

(*a*) Force of this word, see *ante*, Pref. sect. 1.

(*b*) If the apprenticeship be to a profession, as a surgeon, say, "And moreover shall and will permit and allow the sd (*A.*) to walk or attend on days in the week or oftener if needful the hospital of at or attend any other lectures upon medicine, surgery, &c." As to the medical profession, see *ante*, Pref. sect. 2.

(*c*) As to this clause, see *ante*, Pref. sect. 6.

(*d*) As to the death of the master, and how much of the premium must be refunded, see *ante*, Pref. sect. 7.

and ads of the sd (*M.*) shall pay the sum of £ out No. CXXI.
sd sum of £ And lastly for the true performance &c. *Indentures of.*
clause, see *ante*, No. XLVI.)

CLERKSHIP TO AN ATTORNEY.

Qualification to be an Articled Clerk. | 2. *Inrolment of Articles.*
| 3. *Stamp Duty on Articles.*

1. By the 2 G. 2, c. 23, no person shall act as an attorney unless he has served a clerkship of five years to the profession; and by 22 G. 2, c. 46, he must continue and be actually employed by attorney or solicitor. If therefore he served but a small portion of time with another attorney or solicitor (not being regularly bound to him), it has been held not to be a sufficient serving under 7 T. R. 456; unless that attorney be the agent of the master, then by a rule of court of K. B. Tr. 31 G. 3, he is permitted to remain one year and no longer, 4 T. R. 379. By the 1 & 2 G. 4, a person who has taken his degree at either Oxford, Cambridge or Lincoln, is required to be articled for only three years instead of five. By 3 G. 4, c. 16, if a clerk, who is articled for five years, during that time a practising barrister or certificated special pleader for one year, it shall be deemed a part of his service. By the 34 G. 3, c. 14, articles of clerkship must be inrolled six months after the date, with the affidavit of the due execution of the same time. See further, as to articles of clerkship, AFFIDAVITS OF EXECUTION. The stamp on articles of clerkship is 120*l.* and on the counter-articles 15*s.* See further, as to clerkship, Dig. p. ii. tit. ATTORNIES; and p. iii. tit. SOLICITORS. Stamp duty on articles.

No. CXXII.

Articles of Clerkship.

No. CXXII.

Articles of Clerkship.

Articles of Agreement &c. see *ante*, XLVI. Betn (*Master*) of the Court of Chancery and one of the atties of her Majesty's Courts of Q. B. and of the Court of Westminster and solicitor in the High Court of Chancery and one of the atties of the Court of Chancery and (*Father*) of &c. and (*Clerk*) son of the sd (*F.*)

No. CXXII.
*Articles of
Clerkship.*

Clerk covenants
to serve.

Not to destroy
books or papers.

Father to make
good any da-
mage.

of the or. pt *Witness* That the sd (C.) of his own free will and by and with the consent and approbation of the sd (F.) his father hath put placed and bound himself and by these prests doth put &c. himself clerk to the sd (M.) to serve him from the day of the date hereof for and during and until the full end and term of five years from hence next ensuing and fully to be complete and ended And the sd (F.) doth for himself his exs and ads covt promise and agree with and to the sd (M.) his exs ads and ass in manner following that is to say That the sd (C.) shall and will well and faithfully serve the sd (M.) as his clerk in the profession of an attorney at law and solicitor in Chancery from the day of the date hereof for and during the sd term of five yrs and that he the sd (C.) shall not at any time during the sd term of five yrs cancel obliterate spoil destroy waste embezzle spend or make away with any of the books papers writings monies stamps or other property of the sd (M.) his exs ads or ass or any of his clients or employers which shall be deposited in his hands or intrusted to his custody or posson or to the care custody or posson of the sd (C.) and that in case the sd (C.) shall act contrary to the last mentioned covt or if he the sd (M.) his exs ads or ass shall sustain or suffer any loss damage or prejudice by the misbehaviour or neglect of the sd (C.) he the sd (F.) his exs or ads shall make good and reimburse him the sd (M.) the amount and value thof And *furr* that he the sd (C.) shall and will from time to time and at all times during the sd term of five yrs keep the secrets of the sd (M.) and readily and cheerfully obey and exte his lful and reasonable commands and shall not depart or absent himself from the service or employ of the sd (M.) during the sd term witht his consent first obtained but shall from time to time and at all times during the sd term conduct himself with all due diligence honesty sobriety and temperance And that he the sd (F.) his exs and ads shall and will at all times during the sd term at his and their proper costs and chas find and provide the sd (C.) with all and all manner of necessary and becoming apparel and washing and also physic and medical advice and nursing in case of sickness And the sd (C.) doth hby for himself and on his part consent and agree to and with the sd (M.) his exs ads and ass that he the sd (C.) shall and will truly and honestly serve the

sd (*M.*) at all times for and during the sd term as a faithful clerk ought to do in all things. whatsr in the manner above specified *In conson* whof and of the sum of £ of lful &c. by the sd (*F.*) to the sd (*M.*) in hand &c. be the sd (*M.*) for himself his hrs exs and ads doth hby covt promise and agree with and to the sd (*F.*) *That* he the sd (*M.*) shall and will accept and take the sd (*C.*) as his clerk and find and provide him with board and lodging And also shall and will instruct the sd (*C.*) in the knowledge and practice of the law in the Cts at Westr as an atty and solicitor in such manner as he the sd (*M.*) now practises and professes the same *And also* shall and will at the expiration of the sd term use his best endeavours at the request costs and chas of the sd (*F.*) and (*C.*) or either of them to cause and procure him the sd (*C.*) to be admitted and sworn an attorney of her Majesty's sd Courts of Q. B. and C. P. or either of them or any other of her Majesty's courts of law or equity provided he the sd (*C.*) shall have well and faithfully served his sd intended clkshp *In wiiness* &c. see No. XLVI.

No. CXXII.
*Articles of
Clerkship.*

Master cove-
nants to take
clerk.

To provide him
with board,
lodging and in-
struction.

To procure his
admittance as
an atty. &c. at
the expiration of
the clerkship.

No. CXXIII.

Assignment of an Apprenticeship.

No. CXXIII.
*Assignment,
(Apprentice).*

1. *How assignable.*

2. *What necessary on Assignment.*

3. *Stamp-duty on Assignment.*

SECT. 1. An apprenticeship, being a personal trust, is not assign-
able at common law at the will of the master, *Coventry v. Woodhall*,
Hob. 134; therefore an award that an apprentice should be assigned
has been held to be void, *Horne v. Blake*, 2 Str. 1267; see further
ante, Pref. sect. 7; Dig. p. ii. tit. APPRENTICESHIP, p. 98, n. (i);
also *ante*, No. L.

How assign-
able.

2. By the custom of London, an apprentice, when he is assigned
over, must attend at the Chamberlain's Office, and the master must
take his freedom with him. If the assignment is not passed at the
office, it is void. If an apprentice be assigned by the representative
of a deceased master, probate of administration must be produced.

What necessary
on assignment.

3. The 55 Geo. 3, c. 184, imposes the same *ad valorem* duty on
the assignment of an apprentice (not turned over by the parish),

Stamp-duty on
assignment.

No. CXXIII.
*Assignment.
(Apprentice.)*

where there shall be a valuable consideration given, as was (on the original indenture ; where there is no new consideration usual stamp of 1*l.*, or if the indenture contain more than 108*l.* 15*s.* Where there are two parts, each part is charged with same duty, when it does not exceed thirty-five shillings ; and if it does, then one part is charged with the *ad valorem* duty, counterpart with 1*l.* 15*s.* The part bearing the *ad valorem* duty, be kept by the former master or mistress, or the apprentice, counterpart by the new master or mistress. An agreement to an apprentice from one master to another, must, by 23 G. 3, stamped as an agreement, *R. v. St. Paul's, Bedford*, 6 T. R.

Recital of indenture of apprenticeship.

Of agreement to assign apprentice.

Assignment.

New master agrees to perform the covenants of the indenture.

This Indenture made &c. see *ante*, No. LXXXV. Between (*Master*) of &c. and (*apprentice*) of the one pt and (*new master*) of the other pt *Whas* (*A.*) son of A. B. of &c. by inditing date &c. and made betw &c. was duly bd to the sd (*A.*) the term of yrs commencing from the date thof as sd indre will more fully appear *And whas* it hath b that the sd (*A.*) shall serve out the remr of his term of with the sd (*N. M.*) and be by him fully taught and in in the trade business and manual occupation of sd (*M.*) hath thereupon agd to assign the sd (*A.*) as is mentd *Now* &c. in conson of the agrt and or. good consents him the sd (*M.*) thereunto moving He the *Hath* granted bargained sold assigned and set over as hby grant &c. unto the sd (*N. M.*) *All* such right title term of yrs yet to come and unexpired service and whatsr which he the sd (*M.*) hath in or to the sd (*A.*) of the sd indre of apptshp or orwise *To Have and to* such right title duty term of yrs yet to come and unexpired service and demand whatsr hby assd unto the sd (*N. M.*) exs ads and ass from henceforth for and during all the and remr yet to come and unexpired of the sd apptshp of yrs as afd in as ample and beneficial a manner as the sd (*M.*) might or could have had or enjoyed the these prests had not been made Under and subject to the covts and agts in the sd in pt recited indre on the behalf of the sd (*N. M.*) to be done and performed by the sd (*N. M.*) for himself &c. hby covt &c. that he the sd (*N. M.*) his exs &c. shall and will well and truly observe perform

and keep the covts and agts in the sd in pt recited indre of apptshp on the pt and behalf of the sd (*M.*) to be done and performed And the sd (*A.*) Doth hby covt with and to the sd (*N. M.*) that he the sd (*A.*) shall and will at all times during the residue of the sd term of _____ yrs now to come and unexpired well and truly serve the sd (*N. M.*) as an apprentice in the sd trade or business of _____ in like manner in all respects as he has been bounden to do by the hnbeft in pt recited indre
In witness &c. see ante, No. XLVI.

No. CXXIII.
*Assignment,
 (Apprentice).*

Apprentice
 coven:nts to
 serve new mas-
 ter.

No. CXXIV.

Assignment of Articles of Clerkship.

No. CXXIV.
Clerkship.

- | | | |
|--|--|-------------------------------------|
| 1. <i>When Articles may be assigned.
Effect of Assignment.</i> | | 2. <i>Stamp-duty on Assignment.</i> |
|--|--|-------------------------------------|

SECT. 1. If the master die, or discontinue practice, or the contract be cancelled by consent of parties, or the clerk be discharged by rule of court, the 22 G. 2, c. 46, authorizes an assignment of the clerk to another master for the remainder of the term; but if the assignment be made by the executors of a deceased master, and any interval elapse between the decease of the old and the assignment to the new master, the clerk will not be admitted until he has served out the whole of the time with the new master, 2 Chitt. Rep. 61. (As to the affidavit of the execution of the assignment, see *Affidavits.*)

When articles
 may be as-
 signed.

Effect of assign-
 ment.

2. Such an assignment requires a stamp of 1*l.* 15*s.* and the same duty for the counterpart.

Stamp duty on
 assignment.

*This Indre made &c. see ante, No. LXXXV. Betn (old mas-
 ter) of &c. of the first pt (clerk) nephew of &c. of the second pt
 and (new master) of &c. of the third pt Whas (recite articles
 of clerkship) Now &c. in conson of the sd covts on the pt and
 behalf of the (N. M.) hnaft mentd he the sd (O. M.) at the re-
 quest and by and with the consent and approbation of the sd
 (C.) testified by his being a pty to and exting these prests
 Hath assd transferred and set over and by &c. Doth assign &c.
 unto the sd (N. M.) his exs &c. as well the sd recited articles
 and all bent whatsr to be had or made thof as also all the right*

Assignment.

No. CXXIV. Assignment, (Clerkship). int property profit advantage claim and demand whatsr or howsr to arise be had or made to him the sd (*O. M.*) from henceforth of the service of the sd (*C.*) during the now residue of the sd term of yrs by force or virtue of the sd recited articles or orwise howsr *And* he the sd (*N. M.*) for himself &c. doth hby covt &c. with the said (*O. M.*) in manner &c. That he the sd (*N. M.*) shall and will at all times during the sd residue of &c. in the best manner he can instruct the sd (*C.*) as his clk in the business practised &c. *And also* that he the sd (*N. M.*) his &c. shall and will from the day of the date hereof at his and their own costs and charges find allow and provide the sd (*C.*) in competent and sufficient meat &c. and thereof and therefrom save harmless and indemnified the sd (*O. M.*) his &c. *And also* shall and will pay to the sd (*C.*) during the last yrs of the sd term the yrly sum of £ for and towards his expenses in providing clothes &c. *And* each of them the sd (*O.*) and (*N. M.*) doth hby sevlly covt with the sd (*C.*) that they the sd (*O.*) and (*N. M.*) at the request cost and chas of the sd (*C.*) at any time after the expiration of the sd term of yrs shall and will sevlly certify the respive times of service of him the sd (*C.*) with them the sd (*O.*) and (*N. M.*) and also at his request &c. do any or. lful act for getting him to be admitted an atty &c. which shall be adjudged necessary for that purpose *In witness &c.* see *ante*, No. XLVI.

Covenant from
new master.

ARBITRATION.

- | | |
|--|--|
| 1. <i>Submission, how made.</i> | 7. <i>Time of making the Award.</i> |
| <i>By Parol.</i> | 8. <i>Submission void, or revoked.</i> |
| <i>By Deed.</i> | 9. <i>Publication of an Award.</i> |
| <i>By Bond.</i> | 10. <i>Costs of Reference.</i> |
| 2. <i>Parties to the Submission.</i> | 11. <i>Arbitrators, who may be Umpire.</i> |
| 3. <i>Form of an Agreement to refer to Arbitration.</i> | 12. <i>Proceedings of Arbitrators.</i> |
| 4. <i>What matters may be referred.</i> | 13. <i>Requisites of an Award.</i> |
| 5. <i>Extent of Submission.</i> | 14. <i>Award by Parol or by Deed.</i> |
| 6. <i>Power of examining on Oath given to Arbitrators.</i> | 15. <i>Delivery of an Award.</i> |
| | 16. <i>Performance of an Award.</i> |
| | 17. <i>Stamp duty.</i> |

Submission,
how made.

SECT. 1. An agreement to refer any matter in dispute, commonly called a submission, may either be purely by the act of the parties

selves, or it may be by the interposition of a court of law. In former case the submission may be by parol, but in the latter case appears that a submission, unless in writing, cannot, by the 9th and Will. 3, c. 15, be made a rule of court, *Sammways v. Elderley*, 10 Mod. 73; 7 Ves. 419; *Ansel v. Evans*, 7 T. R. 1; see further Dig. tit. ARBITRATION. When the submission is in writing, it usually

Arbitration.

By parol.

By deed.

th mutual covenants, under a penalty; sometimes by indentured poll, or by bond, each party executing an obligation to the other, 8 Co. 80; *Sammways v. Elderley*, 2 Mod. 73.

By bond.

Every one who is capable of making a disposition of his property, or a release of his right, may be a party to a reference, but not as are under any natural or civil disability, as *femes covert*s, &c. (see AGREEMENTS, Pref. sect. 2.) A married woman however, be made a party to a submission in any matter affecting her separate property, *Stra.* 351; *Bateman v. Countess of Ross*, 10 Mod. 235. Those only who are parties to the submission shall be bound by it, 2 Mod. 228. But a man is bound by an award to which he submits for another, as a husband for his wife, *Sty.* 351; a guarantor for an infant, *Latch*, 207; or one of many partners for the rest, *Id.* 228. An attorney may submit to arbitration for his client, *Kill v. Fitzgerald*, 1 Wils. 28, 58; but a submission by bond binds himself, 12 Mod. 129.

Parties to the submission.

At common law, where a cause was depending, the submission might be made a rule of court before the trial. The 9 & 10 Will. 3 extends this privilege to parties where no action has been brought, *Id.* Arbit. 17; see also Dig. p. ii. tit. ARBITRATION. As to the effect of an agreement or covenant to refer to arbitrators, it was formerly held, that such a reference was an implied stay of proceedings in a court of law, 1 Mod. 24; but it was afterwards determined by a rule of court, that no reference of a cause depending in the King's Bench should stay proceedings, unless it was expressed in the rule of reference to be agreed, that proceedings in this court should be stayed, 2 Ld. Raymd. 789; so likewise if no step has been taken towards a reference, a mere agreement to refer will be no bar to an action, *Kill v. Hollister*, 1 Wils. 129; and it has been frequently held, that such an agreement will not oust the courts of law or equity of their jurisdiction, *Thompson v. Charnock*, 8 T. R. 139; *Street v. Rigby*, 6 Ves. 818: and an action is not maintainable on a covenant to refer disputes to arbitration, *Tattersall v. Groote*, 2 B. & P. 131; and even if it be expressly stipulated in the agreement, that there shall be no action or suit at law or in equity, it seems that a court of equity will not, except in particular cases, enforce specific

Force of an agreement to refer to arbitration.

- Arbitration.** performance of such an agreement, *Waters v. Taylor*, 15 Ves. 10; *Gourlay v. D. of Somerset*, 19 Ves. 430.
- What matters may be referred.** 4. The proper matters for arbitration are penal wrongs and uncertain obligations, as trespasses, reckonings, and the like, 9 Co. 78. Things in the realty may be submitted; for although no freehold can pass by the award, arbitrators may award that lands shall be conveyed, or that one party shall give the other a bond for quiet enjoyment and the like, Dy. 242; Bac. Ab. tit. Award, [A].
- Extent of submission.** 5. The extent of the submission may be various, according to the pleasure of the parties, as of one particular matter only, or of many or every subject of litigation between them, which ought to be carefully expressed in the submission, to avoid ambiguity. A submission "of all matters in difference between the parties in the cause," and one "of all matters in difference in the cause between the parties," is not the same thing. By the former mode of expression, the submission is not confined to the subject matter of the particular action, as it is by the latter, *Malcolm v. Fullarton*, 2 T. R. 45.
- Power of examining on oath given to arbitrators.** 6. It is usual to vest in the arbitrators a power of examining the parties and their witnesses upon oath, but if it were not a part of the agreement, the Court could give them the authority to examine upon oath; and the parties submitting could not authorize the arbitrators or any other person to administer the oath, for an extra-judicial oath is not binding so as to incur the penalty of perjury. Now by the 3 & 4 Will. 4, c. 42, s. 39, the arbitrators are empowered to administer an oath or take an affirmation in all cases: so likewise by s. 40 of the same statute, arbitrators are empowered to compel the attendance of witnesses, whether the submission be by order of court or by private agreement.
- Time of making the award.** 7. It is proper to fix the time within which the arbitrators shall pronounce their award; but where the submission limits no time, it shall be understood to be made within convenient time. If by the terms of the submission the arbitrator be enabled, as he frequently is, to enlarge the time for making his award, he may enlarge it more than once, *Barrett v. Parry*, 4 Taunt. 658.
- Submission void or revoked.** 8. The submission in general becomes void by the death of either of the parties, *Potts v. Ward*, 1 Marsh. 366; and may also be revoked by either party previous to the award being made and delivered, *Clapham v. Higham*, 7 B. Moore, 403; S. C. 1 Bing. 87. If the submission be by parol, the revocation may be by parol also, 2 Keb. 64; but where the submission is by deed, the revocation must be of as high a nature as the submission, 8 Co. 80 b; *Milne v. Greatrix*, 7 E. 607; and where the submission is made a rule of court, it

by 3 & 4 W. 4, c. 42, s. 39, be revoked without leave of the Court. There may also be a virtual as well as an express revocation; *the sole* submit to arbitration, and marry before the award is made, the marriage is in effect a revocation, 2 Keb. 8, 65. In all revocation where the submission is by bond, the bond is forfeited. *Brownl.* 62.

Arbitration.

It is usual to insert in the submission the words "so as the arbitrator shall make and publish his award;" but the term "publish" does not imply a formal notification of the award to the parties, unless there is an express proviso to that effect, *Musselbrook v. Dunkin*, 9 Q. B. 55; 8. C. 2 M. & Sc. 740; 1 D. P. C. 722.

Publication of an award.

Arbitrators cannot award the costs of reference, unless such costs are given to them for that purpose in the submission, 1 Cowp. 166; *Whitehead v. Firth*, 12 E. 166; and therefore where it is agreed that the costs shall abide the event of the award, the arbitrator cannot award respecting the costs, *Boodle v. Davis*, 4 Nev. & 8. If no direction be given respecting the costs of the award, they are to be paid by both parties equally, *Grove v. Cox*, 1 Taunt. 424. The safer and more usual way is to insert in the submission, that the costs shall be in the discretion of the arbitrator, *Tidd's Pract.* 825.

Costs of reference.

As an arbitrator is appointed at the discretion of the parties, whom the law supposes free, and capable of judging, may be even although he may be an interested party himself, or represent the opposite party, *Comb.* 218, unless his interest in the submission or connexion with the opposite party was unknown to him, 2 Vern. 251. Where there are two arbitrators only, and they do not agree, it is usual to provide that a third person should be appointed who is called the umpire, whose nomination is either made by the parties themselves at the time of the submission, or left to the discretion of the arbitrators. In this latter case it has been held, that if the arbitrators elected one who refused to accept the office, they cannot elect another, 1 Ld. Raymd. 222; but the better opinion is, that the arbitrators in such case have the power of appointing an umpire, *Com. Dig. Arbit. [F.]* It may, however, be safer to provide for such an event by express stipulation. The appointment of an umpire is mostly under hand only, and in that case does not require attestation, *Routledge v. Thornton*, 4 Taunt. 704.

Arbitrators, who may be.

Umpire.

Arbitrators cannot reserve to themselves an authority to decide any period any point relating to the matter referred to them, 145; 12 Mod. 139. Nor can they delegate their authority to a third person, 2 Atk. 504; but where arbitrators award the substance of

Proceedings of arbitrators.

Award. a thing to be done, they may refer it to others who are competent to settle the manner in which it shall be put into execution, *ib.* 501, *Emery v. West*, 5 Ves. 546. Likewise arbitrators deriving their authority from the submission, their decision must not extend to persons and things beyond the scope of the submission, 2 Mod. 309. In any case of flagrant misconduct on the part of an arbitrator, the injured party may maintain an action against him to recover a compensation in damages, 2 Wils. 143; or file a bill against him in equity, *Lonsdale v. Littledale*, 2 Ves. Jur. 453.

Requisites of an award. 13. As to the requisites of an award, see *post*, AWARD.

Award by parol or by deed. 14. An award may be either by parol or by deed, 1 Salk. 75. If by the terms of the submission the award must be under the hands and seals of the arbitrators, sealing only is not sufficient, *Palm*, 109.

Delivery of an award. 15. An award takes effect from the time of delivery, not from the day of the date, 3 Balstr. 313. If an award be ready for delivery on a certain day, fixed in the submission, it is sufficient, although no delivery be made, *Brown v. Faxser*, 4 E. 584.

Performance of an award. 16. Where parties bind themselves jointly and severally to perform an award, and two or more parties on one side be ordered to pay any sum of money, or do any particular act, each is answerable for the obedience of the others, *Mansell v. Burridge*, 7 T. R. 352. If no time be limited for the performance of what is directed to be done, it must be performed within a reasonable time, *Jenk.* 136. If a thing is awarded to be done within a certain day after the date of the award, and it has no date, the day of delivery must be adopted in its place, *Armit v. Breame*, *Ld. Raymd.* 1076. Executors must obey the directions of an award, although not named in it, 2 Vent. 249. Where the submission is the mere act of the party, whether by parol or by obligation, performance may be enforced by an action upon the award or the submission, 1 Leon. 72; 1 *Ld. Raymd.* 122. If the submission be made a rule of court, non-performance is a contempt, and obedience to it may be enforced by attachment, otherwise the party may have his remedy by action, 1 Saund. 326; *Stra.* 695; *Tidd's Pract.* 834. When the payment of money only is awarded, application ought to be made to a court of law for enforcing payment; but where any thing is directed to be done in specie, as to convey an estate, a bill in equity for specific performance will lie, *Hall v. Hardy*, 3 P. Wms. 187.

Stamp duty. 17. As to the stamp duty on the arbitration bond, see *post*, BOND; on awards, see *post*, AWARD.

See further as to Arbitration, *Kyd on the Law of Awards*; *Watson on Arbitration and Awards*; and *Caldwell on Arbitration*.

No. CXXV.

Agreement to refer Disputes to Arbitration.

This requires an agreement stamp, if under hand only. Where persons enter into an agreement to refer a matter to arbitration agreement and the award require each but one stamp. *n v. Forbes*, 6 Taunt. 171; S. C. 1 Marsh. 525.

cles of (a) Agreement &c. see *ante*, No. XLVI. Betn A. B.

of the one pt and C. D. of &c. of the or. pt *Whas* dis-
have arisen betn the sd pties hto touching the several

titles claims and demands as well of in and to a certain
or tent situated &c. as of in and to a certain pew made by

A. B. and situated &c. *Now Therefore* for the final ending
questions and disputes it is hereby covtd by and betn

pties (*b*) that the rights titles claims and demands of the
i. of in to and out of the same preses or any pt thof shall

are hby referred to the arbitration and final determina-
(*arbitrators*) And the award of the sd (*A.*) if made in

under their hands (*c*) and seals ready (*c*) to be delivered
before the (c) day of now next shall be bind-

l conclusive on all the pties And that for the better en-
the performance and observance of such award the re-

shall be made a (*d*) rule of her Maj. Ct. of Q. B. at

And furr That the sd pties hto and each and every of
hall and will produce unto and deposit with the said (*A.*)

ds evidences and writings relative to the preses in question
r respive posson or power And that each of them shall

ill submit to be examined (*e*) upon oath and will as far
them lies resply do all such or. acts and things as the

No. CXXV.

Agreement to refer Disputes.

Recital of dis-
putes.

Agreement to
refer disputes to
arbitration.

Delivery of
award.

Reference to be
made a rule of
court.

Parties to pro-
duce deeds, &c.

Parties wit-
nesses to be
examined on
oath.

as to the effect of an agreement to refer, see *ante*, Pref. sect. 3.

If it be agreed that the authority of the arbitrators shall not be revoked by
b of either party, then say, "for themselves severally and respively and
veral and respive hrs exs ads and ass." As to the revocation of the sub-
where it is made a rule of court, see Pref. sect. 8.

as to the form of the award, see *ante*, Pref. sect. 14, and delivery, sect.
the time of delivery, sect. 7.

see *ante*, sect. 1.

as to the examination and attendance of witnesses, see sect. 6.

No. CXXV.
*Agreement to
refer Disputes.*

Umpire to be
chosen.

Costs at discre-
tion of arbi-
trators.

Neither party
to bring any
action or suit.

sd (A.) shall require for the better enabling them to make the sd award *And furr* That in case the sd (A.) shall not agree upon the sd award or determination that it shall be lful (a) for the sd (A.) and they are hby expssly empowered by writing under their respive hands to appt another indifferent person to be umpire in or to concur and join with them in considering and determining all or any of the preses hby referred to them *And furr* That all (b) costs and chas attending the sd arbitration shall be in the discretion of the sd (A.) and shall be paid and satisfied pursuant to their award *And* that neither of the sd pties shall (c) bring any action or suit agst the or. of them in relation to the preses or agst the sd (A.) or umpire *And lastly* that each of the sd pties doth hby bind himself unto the or. of them in the penal sum of £ for the true and faithful observance and performance of his respive pt of the sd award and umpirage and of all and evy order and diron thin contd. *In witness &c. see ante*, No. XLVI.



No. CXXVI.

*Submission by
Indenture.*

No. CXXVI.

Submission by Indenture.

Recital of agree-
ment to refer.

This Indre made &c. see *ante*, No. LXXXV. Betn E. G. of &c. and J. A. of &c. exrs of the last will and testament of P. M. late of &c. decd of the first pt R. G. one of the grandchildren of the sd P. M. decd by his daur M. late the wife of the sd E. G. now also decd of the second pt R. B. husband of L. B. grand-daughter of the sd P. M. decd of the third pt *Whas* differences and disputes have arisen and are still depending betn the sd E. G. the elder and J. A. as exs afd and the sd R. G. and also betn the sd exs and the sd R. B. in right of his wife L. B. touching the este and effects of the sd P. M. decd *And* in order to put an end to the sd differences and disputes [and to obtain an amicable adjustment thof] the sd pties have and each of them

(a) See sect. 11.

(b) Or, if it be so agreed, "all costs and chas attending the sd arbitration shall be equally borne and discharged by the sd parties to these prests," see sect. 10.

(c) See sect. 3.

d to refer the same to the award of I. W. of &c. N. A. d E. G. of &c. or any two of them arbitrators indiffer-
 ted and named to arbitrate award order judge and de-
 of and concerning the sd differences and disputes betn
 es resp'y *Now this Indre witnesseth* That they the sd
 l J. A. as exs afd and the sd R. G. and R. B. do and
 evy of them for himself sevly and resp'y and for his
 respive hrs exs and ads doth covt &c. with and to each
 s exs and ads resp'y well and truly to stand to obey &c.
 d &c. of the sd (*arbitrators*) or any two of them arbi-
 differently elected &c. to arbitrate &c. of and concerning
 ll manner of actions &c. (see *next precedent*) touching
 s or any thing in any wise relating thereto (a) so as the
 of the sd arbitrators or any two of them be made &c.
 s also agrd &c. by and betn the sd pties (*submission to*
a rule of court, see last precedent) And the sd pties do
 irr agree that none of them shall or will prosecute any
 suit in any court of law or equity agst the sd (A.) any
 of them or bring or prefer any bill in equity agst each
 l concerning the preses until the sd award be made and
 . And also that all costs and chas attending the pre-
 tration shall be in the discretion of the sd (A.) or any
 iem and pd and satisfied pursuant to their award And
 : the sd pties &c. (*produce deeds &c.*) In witness &c. see
 . XLVI.

No. CXXVI.
Submission by
Indenture.

No. CXXVII.

Arbitration Bond.

No. CXXVII.
Bond.

An arbitration bond requires a stamp of 1l. 15s. and a further Stamp duty.
 ve duty of 1l. 5s. for every 1080 words above the first 1080;
 e on the fly leaf of an arbitration bond was an indorsement
 late after the time limited by the bond for making the award,
 ag that the parties within-named had met that day by con-
 he award, this was held to be a new agreement to refer, and
 admissible in evidence without a stamp, *Stephens v. Lowe*,
 12; S. C. 2 M. & Sc. 44. An agreement stamp is, however,

(a) As to the extent of the submission, see sect. 5.

No. CXXVII. Bond. not necessary to an arbitration bond, containing, besides the usual covenants, an agreement as to the payment of costs, *Wansborough v. Dyer*, 2 Chitt. 40.

Recital of agree-
ment to refer
disputes to the
arbitration of
arbitrators,

or umpire.

Condition.

Know all Men That I, A. B. of &c. am held and firmly bound to C. D. of &c. in the sum of £ of &c. or to his certain atty exs ads or ass for which paymt to be well and faithfully made I bind myself my hrs exs and ads firmly by these prests Scaled with my seal Dated the day of in the yr of the reign of our Sovereign Lady and in the yr of our Lord *Whas* differences have arisen and are depending betn the above bounden A. B. and the above-named C. D. concerning the occupation management and cultivation by the sd C. D. of a certain farm situate at in the co. of the property of the sd A. B. lately held by the sd C. D. as tenant to the sd A. B. and also concerning the paymt of the several sums of money pd laid out and expended by the sd A. B. for ploughing harrowing and manuring &c. previous to the sd C. D. entering upon the same as tenant and likewise concerning the rent paye in respect of the sd farm from the sd C. D. and all which differences and demands concerning the same the sd pties have agrd to refer to the award judgment and determination of (*arbitrators*) arbitrators indifferently chosen by and between the sd pties to award arbitrate and determine concerning the same and in case the sd arbitrators cannot determine the same within the time hereunder limited then to the umpirage of a third person to be by the sd (*A.*) chosen as umpire *Now therefore* the condition of the above-written bond or obligation is such that if the above-bounden A. B. his hrs exs and ads and evy of them do and shall on his and their pt and behalf in and by all things well and truly stand to observe perform fulfil and keep the award arbitration final end and determination of (*A.*) arbitrators indifferently chosen to arbitrate award ad-judge and determine upon and concerning the occupancy and management of the sd farm and the sum laid out by the sd A. B. in the cultivation of the same and the rent paye in respect of the same and also touching and concerning all and all manner of actions causes of action suits [bills bonds specialties covts contracts promises acct's reckonings judgments exons extents quarrels controversies trespasses] dams and demands whatsr

h at law and in equity had moved brought commenced sued
 secuted done suffered or committed by or betn the sd pties
 as the award of the sd (A.) or any two of them be made in
 iting under their hands and seals ready to be delivered to the
 pties in difference on or before the day of
 sd if the sd (A.) shall not make such their award of and con-
 nying the preses within the time limited as afd Then if the
 A. B. his hrs exs and ads and evy of them on his and their
 and behalf do and shall well and truly stand to &c. the um-
 rage of the sd (*umpire*) being a person indifferently named
 d chosen by the sd pties as umpire in and concerning the
 reses so as the sd (U.) doth make and set down his award and
 npirage &c. in writing under his hand and seal ready to be
 dived to the sd pties in difference on or before the
 y of (a) Then this obligon to be void or else to remain
 full force and virtue.

No. CXXVII.
Bond.

No. CXXVIII.

No. CXXVIII.

Rule of Reference at Nisi Prius when a Juror is withdrawn.

*Rule of
 Reference at
 Nisi Prius.*

London to wit. At the sitting of *Nisi Prius*, held at Guild-
 hall, in and for the city of London, on &c., and in the
 year of the reign of our sovereign &c., before the Right Hon.

Chief Justice of our Lady the Queen, assigned to hold
 the Pleas before himself.

B. v. S.—It is ordered by the court, by and with the consent
 of the plaintiff and defendant, their counsel and attornies, that
 the last juryman sworn and impannelled in this cause be with-
 drawn out of the panel, and that all matters in difference be-
 tween the said parties be referred to the award, order, arbitra-
 ment, final end and determination of F. C., of the Inner Temple,
 Esq., so as he shall make and publish his award in writing, of

(a) Here may be added, if necessary, " And the sd A. B. doth also consent
 and agree &c. (*witnesses to be examined on oath &c. as in the last precedent*)
 And also that the costs &c. shall be in the discretion of the referees &c. And
 for (*submission to be made a rule of court &c.*)"

No. CXXVIII. *Rule of
Reference at
Nisi Prius.* and concerning the premises in question, on or before the day of Hilary Term now next ensuing. And that the said parties shall and do perform, fulfil and keep such award so to be made by him the said arbitrator as aforesaid. And it is also ordered, by and with such consent as aforesaid, that the costs of the said cause shall abide the event and determination of the said award, and that the costs of the said reference shall be to the discretion of the said arbitrator, who shall direct and award by whom, and to whom, and in what manner the same shall be paid. And it is likewise ordered, by and with such consent as aforesaid, that the plaintiff and defendant respectively are to be examined upon oath, before the said Lord Chief Justice, or some other justice of the same court of our Lady the Queen, before the Queen herself, if thought necessary by the said arbitrator, and do produce before the said arbitrator all books, papers and writings, touching and relating to the matters in difference between the said parties, as the said arbitrator shall think fit, and that the witnesses of the plaintiff and defendant respectively are to be examined upon oath, to be sworn before the said Lord Chief Justice or some other justice of the same court. And it is likewise ordered, by and with such consent as aforesaid, that neither the plaintiff nor the defendant shall prosecute, or bring any action or suit, in any court of law or equity against each other, of and concerning the premises in question so as aforesaid referred. And it is further ordered, by and with such consent as aforesaid, that if either party shall by affected delay or otherwise wilfully prevent the said arbitrator from making such award, he shall pay such costs to the other as the said court of our said Lady the Queen before the Queen herself shall think reasonable and just. And, lastly, it is ordered by the like consent as aforesaid, that the said court of our said Lady the Queen before the Queen herself, may be prayed that this order may be made a rule of the same court.

By the Court.



No. CXXIX.

Rule for making a Submission by Bond a Rule of Court.

No. CXXIX.

*Submission a
Rule of
Court.*

A. B. v. C. D. In the Common Pleas,
Term &c.

Upon reading the affidavit of G. H. and another, and the bond or obligation, with the condition thereof thereunder written, bearing date &c. duly executed by C. D of T. Esq. to A. B. of P. Esq.; the tenor and effect of which said bond and obligation is in the words and figures following, that is to say,

Know all men &c. (*set out the bond and condition verbatim*). It is ordered, that the said bond and the condition thereof, and the submission between the parties in the said condition mentioned, be and the same is hereby entered and made a rule of this court, pursuant to the statute in such case made and provided.

No. CXXX.

Order to refer all Matters in Difference in the Cause.

No. CXXX.

*Order of
Reference.*

Rolls.

Between { S. F. and others, plaintiffs.
J. H. defendant.

On motion of plaintiff's counsel, alleging plaintiff's bill and defendant's answer; and cause being at issue, witnesses had been examined on the part of the plaintiff and publication had passed in the cause, and plaintiff and defendant had since agreed to refer all matters in dispute between them in the cause to the award of _____, and therefore praying that the same may be referred to his award accordingly: on which and on hearing defendant's counsel, who consented thereto, It is ordered, That all matters in difference between plaintiff and defendant in the cause be referred to the award of &c. so as the award be made in writing &c. And in case the said arbitrator shall not be prepared to make his award at the time aforesaid, the parties from time to time to apply for and consent to such enlargement of the time as the said arbitrator shall certify, and the court

No. CXXX.
*Order of
Reference.*

deem reasonable. And also, that the costs of the suit, and reference, and the award, lie in the discretion of the said arbitrator, and that the parties and all witnesses to be by then produced, if required by the said arbitrator or either party, be examined upon oath, to be sworn before one of the masters of the court, and that plaintiff be at liberty to read before the arbitrator the depositions in the cause, and defendant to be at liberty to examine before the arbitrator the witnesses to such depositions, and that all deeds, books, &c. be produced to the said arbitrator, and that neither party prosecute any action or suit against the arbitrator or each other concerning the premises; and if either party shall be affected delay &c. (see *Rule*) and that seven days' notice of any appointment to proceed on such reference, to be given to each party and their solicitor, be deemed good notice; and that if either party, being duly summoned, neglect or refuse to attend arbitrator, he be at liberty to proceed without such attendance and make his award *ex parte*. And either party be at liberty to apply to the court to have said award made an order of the court.



No. CXXXI.

No. CXXXI.
*Order of
Chancery.*

*Order that an Agreement be made an Order of the Court
of Chancery.*

Whereas by Articles of Agreement bearing date &c. it is recited and agreed as follows: (*setting forth the instrument verbatim*). Now upon motion of defendant's counsel, and upon producing said agreement, praying that the same may be made an order of court, It is ordered that said agreement be made an order of court to be observed and performed by all parties thereto according to the tenor and true meaning thereof, Mr. of counsel for the plaintiff, consenting thereto.



No. CXXXII.

*Order of
Chancery.*

No. CXXXII.

Order to make an Award an Order of the Court of Chancery.

Upon motion &c. praying the writing of award, hereafter mentioned, bearing date the day of in the year of

our Lord 18 , under the respective hands and seals of A. B. and C. D., arbitrators &c. and by them sealed and delivered, being first duly stamped, in the presence of E. F., may be made an order of this Court : and the said writing of award being now produced, the same appears to be in the words and to the tenor following, that is to say ; To all to whom &c. (*set out the award verbatim*) whereupon and upon hearing &c. and an affidavit made by the said &c. his lordship doth order &c.

No. CXXXII.
*Order of
Chancery.*

No. CXXXIII.

No. CXXXIII.
*Appointment of
Arbitrators.*

Acceptance by the Arbitrators of the Appointment.

We the undersigned A. B. and C. D. the referees within named and apptd do hby accept of the apptmt as arbitrators for the purps thin expssd And for the proceeding in the investigation of the matters in dispute between the pties within mentd we appt and fix to meet at the house of in &c. by eleven o'clock in the forenoon. Witness our hands this day of 18

Witness

A. B.
C. D.

No. CXXXIV.

No. CXXXIV.
*Appointment of
Umpire.*

Appointment of a Third Arbitrator, or Umpire.

Obs. The appointment of an umpire made in writing by the arbitrators, requires no stamp, *Routledge v. Thornton*, 4 Taunt. 704.

We A. B. and C. D. the arbitrators within named by this memorandum in writing under our hands made before the entering upon the within mentd arbitration do hby nominate and appt E. F. of &c. (a) the third arbitrator to whom togr with ourselves

(a) If the consent of the third person has not been obtained, add, "on condition that he do within days from the date hereof by some writing under his hand consent to act therein accordingly."

No. CXXXIV. *Instrument of*
Cause. the within matters in dispute between the pties within named shall be referred according to the tenor and effect of the within written rule [bond obligation or indre] As witness &c. see ante, No. CXXXIII.



No. CXXXV.

No. CXXXV.

Another.

We the undersigned A. B. and C. D. arbitrators within named having considered of the matter in difference betn the sd pties and having heard what each of them had to offer and allege in his behalf but not having agreed in relation thereto so as to enable us to make an award betn the sd pties do hby in pursuance of the power and direction given to us for that purpose by the within written instrument nominate and appt E. F. of &c. to be umpire betn the sd pties in determining the matters in dispute as afd As witness &c. see ante, No. CXXXIII.

Witness

A. B.

C. D.



No. CXXXVI.
By Arbitrators.

No. CXXXVI.

Nomination of an Umpire by Arbitrators appointed.

To all to whom &c. see ante, No. C. *Whas* by an order of the Lord High Chancellor bearing date the day of in a cause then depending in the High Court of Chancery where F. G. I. W. and K. L. were complainants and I. B. G. W. and R. N. were defts it was then ordered by the Lord High Chancellor in Court as betn the pltff F. G. and the defts I. B. and G. W. that all matters in difference betn the sd pties in this cause shd be referred to the award and determination of us (arbitrators) of &c and that we shd make our award therein on or before the first day of Trinity Term then next and in case we shd not agree in opinion that we shd name an umpire who shd make an umpirage on or before the day of term then next And *whas* we the sd (arbitrators) have taken the matters so referred to us into our consideration but cannot agree

opinion concerning the same *Now Know ye* That in pursuance of the power and direction afd in respect to the naming an umpire in the sd matters we the sd (*arbitrators*) do hereby unite and appt &c. As *witness* &c. see *ante*, No. CXXXIII.

No. CXXXVI.
By Arbitrators.

No. CXXXVII.

No. CXXXVII.
Time for making the Award.

Enlargement of the Time for making an Award by the Parties in Dispute.

Now all &c. see *ante*, No. XCVI. That we the within-named J. and C. D. for ourselves respively and for our respive hrs and ads have given and granted and by these prests do give grant unto the within-named (*arbitrators*) until the of now next ensuing for making their award of and concerning the several matters and things to them referred as in mentd so that they make their award in writing &c. on before the day of As *witness* &c. see *ante*, CXXXIII.

No. CXXXVIII.

No. CXXXVIII.
Time for making the Award.

Enlargement of the Time for making an Award by Arbitrators.

We the undersigned (*arbitrators*) by virtue of the powers en to us for that purpose do hereby extend and enlarge the e for making our award until the day of now at ensuing on or before which sd day our award in writing of concerning the matters in difference within mentd shall be de and published As *witness* &c. see *ante*, No. CXXXIII.

AWARD.

- | | |
|---|---|
| 1. <i>Requisites of the Award.</i> | 2. <i>Amount of Stamp Duty.</i> |
| <i>First, must be consistent with the Submission.</i> | <i>Deed Stamp.</i> |
| <i>Second, must be certain.</i> | <i>Ad valorem Stamp.</i> |
| <i>Third, must be mutual.</i> | 3. <i>What an Award within the Stamp Act.</i> |
| <i>Fourth, must be final.</i> | 4. <i>Effect of an improper Stamp.</i> |
| <i>Fifth, must be of a Thing possible and lawful.</i> | 5. <i>Affidavit to support, &c. an Award.</i> |

Requisites of the award.

SECT. 1. The general requisites of an award are, First, That the award must be consistent with the submission; Secondly, That it must be certain; Thirdly, That it must be mutually satisfactory; Fourthly, That it must be final; Fifthly, That it must be of a thing possible and lawful.

Must be consistent with the submission.

First. *The award must be consistent with the submission.* If it be made of any other thing than what is contained in the submission, it is void; as where the submission is of all differences at the time, an award as to differences subsequent to the submission is bad, Roll. Arbit. (C) 8 S. O.; *Barnardiston v. Fowler*, 10 Mod. 204; or an award that a lease should be granted from a certain time, which by the submission ought to have been awarded from a time prior, *Bonner v. Liddell*, 1 B. & B. 80; so under a submission of all matters in difference between A. and B., an award on matters in difference between A. B. C. and D. is bad, *Fisher v. Pimbley*, 11 East, 188; so an award of a sum of money to one of the parties, and another sum to a stranger, is good for the party himself, but void for the stranger, 2 Saund. 293.

Must be certain.

Secondly. *The award must be certain*, therefore where the award is to give security for the payment of a sum of money, it is bad, because uncertain what security, whether by bond or otherwise, *Thine v. Rigby*, Cro. Jac. 314; or an award of a bond for quiet enjoyment, without appointing a certain sum, is void, *Salmon's case*, 5 Co. 77, S. C. Cro. Eliz. 432. But the certainty required in an award is to a common intent, and the uncertainty must expressly appear on the face of the award, 1 Burr. 277.

Must be mutual.

Thirdly. *The award must be mutually satisfactory*, it must not be on one side only; what is awarded to be done to one, must be an advantage to both, namely, to give satisfaction to one, and discharge the other; therefore where A. and B. submit all actions by A. against B., and by B. against A., an award that A. shall go quit, and not B.

is void, Roll. Abr. 253; therefore where a suit in Chancery, in which some of the plaintiffs were infants, was referred by an order of that court, an award made in pursuance thereof was held bad, as there was nothing to bind the infants, and consequently no mutuality.

Award.

Fourthly. *The award must be final*, therefore an award that if the plaintiff on account prove certain articles against the defendant, then he shall pay so much as the plaintiff was damnified thereby, is not final, *Selsby v. Russel*, Comb. 456. But an award of a thing to be done at a future day, if such thing must be absolutely done, is good, Palm. 110.

Must be final.

Fifthly. *The award must be of a thing possible and lawful*, as an award of a payment at a day past is bad, because impossible, 1 Inst. 106; or an award that one shall steal and the like, ib.

2. The stamp duty required on an award is 1*l.* 15*s.*; and where the same together with any schedule or other matter put or indorsed hereon, or annexed thereto, contains 2160 words, then for every entire quantity of 1080 words over and above the first 1080, a further progressive duty of 1*l.* 5*s.* But where an opinion is given on a case, it has been held that, supposing a stamp on the opinion was necessary, the case formed no part of it, although the opinion was annexed to the case, and therefore need not be reckoned in computing the number of words, *Boyd v. Emmerson*, 2 Ad. & Ell. 184; S. C. 4 Nev. & Man. 99.

Amount of stamp duty.

An award in writing, under seal, need not have a deed stamp, unless delivered as a deed, but if delivered as an award, an award stamp held sufficient, *Brown v. Vawser*, 4 East, 584; *Blundell v. Brettargh*, 17 Ves. 236. This distinction is, however, rendered immaterial by the 55 G. 3, c. 184, which makes an award in all cases subject to a deed stamp. An award by commissioners under an Inclosure Act need not have an *ad valorem* stamp upon the money consideration, *Doe v. Preston*, 7 B. & C. 392.

Deed stamp.

Ad valorem stamp.

3. As a rule where a document on the face of it does not appear to be an award, it need not be stamped as such, therefore where a defendant had stated that if a miners' jury should say that the shaft was his, he would remunerate the plaintiff, held, that the verdict of the jury given in writing, and stating that the shaft was in defendant's possession, was not an award, and did not require an award stamp, *Sybray v. White*, 1 M. & W. 435; S. C. 2 Gale, 68; so it seems that an opinion given by counsel, to whom a case was referred for his opinion, was held not to be an award within the provision of the Stamp Act, *Boyd v. Emmerson*, *ub. sup.*

What an award within the Stamp Acts.

4. If an award be made on an improper stamp, and no application be made to enforce it, the court will not set it aside, *Preston v.*

Effect of an improper stamp.

- Award.** *Easton*, 7 T. R. 95; see further as to setting aside awards, 2 Bacon. Abr. tit. Arbit. and Award; Watson on Awards, 2d ed. Chap. ix.
- Affidavit to support, &c. an award.** 5. An affidavit to support or set aside an award, has been held to require a stamp, not being made for the immediate purpose of being filed, read, or used in a court of law or equity, according to the 55 G. 3, c. 184, *Templeman v. Reed*, cited by Collins on the Stamp Laws, 284.

No. CXXXIX.

*Award under
an Agreement.*

No. CXXXIX.

*Award pursuant to a Clause in Articles of Agreement for
making Repairs.*

**Recital of an
agreement by a
builder to make
repairs.**

To all to whom these Prests shall come We the (arbitrators) send greeting *Whas* by certain articles of agreement bearing date &c. and made betn A. B. of &c. gent. of the one pt and C. D. of &c. builder of the or. pt he the sd C. D. in conson of the sum of £ to be paid to him as hnaft is mentd did covt with the sd A. B. that he the sd C. D. at his own proper expence wld on or before the day of in a complete and workmanlike manner and with good and substantial materials of all sorts make the sevl alterations reparations and improvements to a messe situate &c. and in such manner as thin is more parlarly mentd and set forth in conson whof the sd A. B. did covt with the sd C. D. that he shd and wld pay unto the sd C. D. the sum of £ in manner following that is to say the sum of £ pt thof on the day of then next ensuing and the sum of £ residue thof within fourteen days next after the sd messe should be completely repaired and improved in manner as thin befe mentd And it was thby mutually agrd that if any dispute shd arise betn the sd pties relating to the performance of the sd articles that then the same shd be left to the decision of two indifferent persons as arbitrators the one to be named by the sd A. B. and the other by the sd C. D. or to an umpire to be chosen by the said (arbitrators) And whas the sd C. D. hath at his charge made such alterations reparations and improvements to the sd messe pursuant to his covt contd in the sd articles and hath recd of the sd A. B. the sum of £ being the first paymt mentd in the sd articles And whas some disputes have since arisen touching the reparations made as afd and the same have been referred to us the sd (arbitrators) Now

**To refer dis-
putes to arbi-
tration.**

**Performance of
the contract by
the builder.**

ye that we the sd (*arbitrators*) having fully viewed and
 sted the sevl alterations reparations and improvements
 in and to the said messe by the said C. D. do hby award
 he sum of £ shall be deducted from the sd sum of
 so remaining to be pd to the sd C. D. as afd And we
 l (*arbitrators*) do hby declare award and determine that
 is now justly due and ought to be pd to the sd C. D. ex-
 e of the sd sum of £ so pd to him and of the sd sum
 hby agrd by us the sd (*arbitrators*) to be deducted as
 e full sum of £ of lful &c. which said sum of £
 hby order and award shall be pd by the sd A. B. to the
 D. on the day of next at the house known &c.
 t the hour of in the forenoon of the same day And
 hby furr award that the sum of £ being the expence
 has incident to the arbitration shall be pd by the sd A. B.
 D. in equal moieties And lastly upon paymt of the sd
 of £ we do hby award and direct that the sd pties shall
 exte and deliver to each other mutual releases in writing of
 ad evy matter htofe in difference between them and so
 ed to us as afd if and when either pty shall require the
 and that the expences of such rele shall be pd by the pty
 ring the same In witness &c. see ante, No. CXXXIII.
 ceived the day of 18 of the sum of
 being the amount by the annexed award directed to be pd
 e and which I hby acknge to have received in addition to
 htofe recd on acct of my bill delivered to the sd A. B. in
 discharge and satisfaction of all claims and demands whatsr
 h I have or ever had agst the sd A. B.

No. CXXXIX.
Award under
an Agreement.

Disputes be-
tween the par-
ties.

Award.

Parties to exe-
cute mutual re-
leases.

C. D.

No. CXL.

Award under a Submission by Deed.

No. CXL.
Award under a
Submission by
Deed.

To all to whom these Prests shall come (*Debtor*) of &c. sendeth
 stng Whas by a certain deed bearing date &c. and made
 1 (*debtor*) of &c. of the first pt and (*trustees*) trustees on be-
 f of themselves and the other crs of the sd (*debtor*) of the

No. CXL.
Award under a
Submission by
Deed.

second pt and the sevl psns whose names are thereunto subscribed and seals affixed being crs of the sd (*debtor*) of the third pt and A. B. of &c. of the fourth pt after reciting among other things That the sd A. B. claimed that the sd ptshp concern of N. O. and O. P. was indebted to him in the sum of £ or some or. sum or sums of money secured to him by the bond of the sd N. O. and O. P. some or one of them or by some or. secty or secties but it was contended on the pt of the said (*T.*) and or. the crs of the sd (*D.*) that he the sd A. B. was not intitled to recover any pt of the sd debt or sum of the sd ptshp concern until all the crs of the sd concern were pd off and satisfied their full and whole debts of twenty shillings in the pound inasmuch as it appeared to them that the sd A. B. at the time such secty or secties were so given as afd was a ptnr in the sd concern of N. O. and O. P. and still remained a ptnr therein so far as respected the crs of the sd concern It was covtd decld and agrd by and betn all and evy the sd pties hto that in order to settle such differences and disputes and parlarly the sd A. B. for himself his exs and ads did covt and agree to and with the sd (*T.*) as trustees as afd that the sd matter in difference betn them shd be left to the award &c. of &c. who shd award and determine whether the sd A. B. was not a ptnr in the sd concern of N. O. and O. P. at the time &c. and whether he did or did not still remain &c. And in case it shd be awarded that the sd A. B. is intitled so to recover on such secty or secties then he shd be intitled to rece the bent and provisions of the now reciting deed equally with the or. crs of the sd (*D.*) but in case it shd be awarded that he was a ptnr in the sd concern of N. O. and O. P. at the time of taking such secty &c. then he the sd A. B. his hrs exs and ads should and would whenever thereunto required by the trustees before named grant convey assign and assure by such conveys assigns or or. assurs as they shd require unto them the sd (*T.*) their hrs exs ads and ass all his int in the ptnshp este stock and effects and in all or. the heredit and preses hby covtd to be assd and conveyed to be held by them upon the trusts hnbeft decld to and for the bent of all or. the crs of the sd (*D.*) And moreover that all and evy the pties hto should and would stand to &c. the award &c. so as the same &c. *Now know ye* &c. I the sd (*A.*) having &c. do award &c. that the sd A. B. was not a ptnr in the

concern of N. O. and O. P. at the time the sd secty or secties
any of them were given to him by them as afd and that he
sd A. B. is intitled in law to recover on the sd secty or secties
re all the or. crs of the sd concern shall have been pd their
and whole debts of &c. in the pound *In witness &c. see*
No. XLVI.

No. CXL.
*Award under a
Submission by
Deed.*

No. CXLI.

ard of Two Arbitrators under a Submission by Cross Bonds.

No. CXLI.
*Award under
Cross Bonds.*

to all to whom these Prests shall come We the sd (one arbi-
or) of &c. and (other arbitrator) of &c. send greeting *Whas*
two several bonds or obligations in writing under the respive
ds and seals of A. B. of &c. and C. D. of &c. bearing date
ly on or about the day of last past the sd A. B.
une bd to the sd C. D. and the sd C. D. to the sd A. B. in
penal sum of £ with condons thereunder written to stand
bide fulfil and keep the award and final determination of us
sd (A.) indifferently chosen to arbitrate award and determine
nd concerning all matters referred to us so as the award of
he sd (A.) was made and set down in writing under our hands
s ready to be delivered on or before the day of
t ensuing as by reference to the sd bonds or obligations will
e fully appear *And* it was agrd by the sd pties that the
mission shd be made a rule of her Maj. Ct of Q. B. which
afterwards accordingly done *And also* that the costs and
s of the sd bonds and obligations and all costs and chas of
l attending the sd arbitration and award shd be in the dis-
tion and subject to the award of us the sd (A.)(a) *Now know*
That we the sd (A.) having taken upon ourselves the charge
l busnss of the sd award and having heard the allegations and
ofs of both the sd pties and their respive witnesses concern-
g the sevl matters referred to us and also upon our view and
pection of the sd farm lately occupied by the sd A. B. upon

Recital of arbi-
tration bonds.

Award.

(a) If the time has been enlarged by consent of parties, say, "*Whas* by a
ting under the hands of the sd A. B. and C. D. bearing date &c. the time in
in pt recited bond limited for our making our award was enlarged until the
day of next ensuing."

No. XLII.
Award under
Cross Bonds.

the arbitration in find and award in manner following that is
to say First we find and award That the sd A. B. hath not per-
formed and fulfilled the sevl covts contd in his lease of the sd
farm for sowing a certain quantity of lime thereupon for scouring
and dicing and for repairing the hedges fences and gates and
respecting the ploughing and course of husbandry thof And
we furr find and award That the sd A. B. hath ploughed a cer-
tain field of acres part of the sd farm and hath sown
acres thereof with wheat contrary to the covts contd in his sd lease
the whole crop of which has been reaped by the sd C. D. And
we the sd A. do furr award That the sd C. D. shall have and
take to his own use the whole of the sd crop grown in the sd
field of acres and that the sd A. B. shall be intitled to
rece from the sd C. D. the value of the sd acres of wheat
in the sd field at the rate of £ per acre exclusive of tithe
And we the sd A. do hby furr award and determine and ad-
judge that the sd A. B. his exs or ads shall and do on or before
the day of inst pay or cause to be pd unto the sd
C. D. his exs or ads at the house of &c. at twelve o'clock of the
same day the sum of £ in satisfaction for the dams done to
the sd farm of the sd A. B. by his breach of the covts contd in
his sd lease And we furr award and order That the sd A. B.
shall well and truly pay the costs chas and exps incident to and
incurred by this arbitration and award (except the chas and exps
of I. F.) And we furr hby award That the sd C. D. shall and
do on the sd day of inst at the time and place afd
well and truly pay unto the sd A. B. the sum of £ per acre
for acres of wheat pt of the sd close of acres and that
the sd C. D. shall pay the tithe due in respect thof In witness
&c. see ante, No. XLVI.



No. XLIII.
Another under
Cross Bonds.

No. XLII.

Another Award under a Submission by Cross Bonds, between a
Surveyor and a Company.

Recital of
bonds.

To all to whom these Prests shall come I (arbitrator) of &c.
send greeting Whas in and by sevl bonds or obligations in

ing bearing date resply on or about the &c. the Company of
nd (*surveyor*) of &c. became bound to each other in the
sum of £ with condons thereunder written That if the
ompy and their successors and the sd (S.) his hrs exs and
lid and shd for and on their respive pts and behalves in all
s well and truly stand to abide by obey perform fulfil and
the award order arbitrament final end and determination
e the sd (A.) of and concerning all and all manner of ac-
causes of action suits &c. (see *Arbitration Bond*) and de-
ls whatsr both at law and in equity at any time theretofore
made moved done pd sustained commenced prosecuted or
nding by and betn the respive pties so as the sd award
ld be made in writing &c. (see *the two last precedents*) And
s thby agrd that the costs &c. And also That the money
e awarded to the sd (S.) if any shd be awarded to be pd to
or his order within ten days after the then next quarterly
t of directors from the publication of the sd award and that
d be lful for the sd (A.) in making his sd award to direct
appt general rels to be made and exted by and betn the sd
resply or mutually to be exchanged betn them as the na-
of their respive cases shd require and in his judgment be
ed expedient And also to direct and award by whom the
nce of such general rele or rels shd be pd and discharged
Know ye and these Prests witness That I the sd (A.) having
upon myself the sd reference and having been attended
e sd pties or their solicitors or agts and having examined
witnesses heard their respive allegations and investigated
ccts and transactions by and betn the sd parties and ma-
y considered the same do make my award in manner fol-
g that is to say *I award and determine* That there is now
due and owing to the sd (S.) from the sd Compy of G. the
of £ And I do award order and direct That the sd sum
be pd to the sd (S.) or order within ten days after the
quarterly court of directors which shall be held after the
ication of this my award And I do furr order and direct
each of the sd pties shall pay their own costs chas and
of the sd bonds of arbitration and their witnesses and all
ers whatsr attending and incidental to the sd reference and
the costs and chas attending this my award shall be pd

No. CXLII.
*Another under
Cross Bonds.*

Conditions.

Stipulations.

Award.

No. CXLII. equally betn them *And lastly* I do award and direct that general rels be made &c. (see *first precedent*) *In witness* &c. see *ante*, No. XLVI.

Another under Cross Bonds.



CXLIII.
Award under a Judge's Order.

No. CXLIII.

Award of Differences between two Copartners under a Submission by a Judge's Order.

Recital of order. *To all to whom these Prests shall come* I (arbitrator) of &c. send greeting *Whas* at a sitting of *Nisi Prius* after term last holden at the Guildhall in and for the city of London and county of the same (a) on Wednesday the day of and by adjournment on the day of the same in the yr of our Lord 18 before the Rt Hon. Lord Chief Justice of the C. P. it was ordered by the sd court in an action then and there depending betn A. B. plttf and C. D. deft by and with the consent of all pties their counsel and atties that a juror shd be withdrawn and all matters in difference betn the sd pties shd be referred to the award arbitrament final end and determination of me the sd (A.) so as I shd make and publish my award in writing under my hand of and concerning the preses in question on or before the day of then next ensuing And that the sd pties should perform fulfil and keep such award so to be made by me the sd (A.) as afd And that the costs of the cause shd abide the event of the sd award And that the costs of the present reference shd be in the discretion of me the sd (A.) who shd direct and award by whom to whom and in what manner the same shd be pd as by the sd order reference being thereto had will more fully appear *And whas* the time for making and publishing the sd arbitrator's award in pursuance of the sd recited order hath by sevl rules of the sd Ct of C. P. made from time to time by and with the consent of the sd pties been and the same now stands enlarged until the day of this present term *Now know ye* that I the sd (A.) having taken upon myself the charge and burthen

Time of making award enlarged.

(a) Or, "at *Westr* in and for the county of *Middx.*"

f the sd reference and having inspected the coptship bks of
 ect and having examined and duly considered the allegations
 ouchers proofs and witnesses of the sd pties resply do make
 and publish this my award of and concerning the preses that is
 to say *I do* award order and direct That all proceedings in the
 sd cause shall cease and be no further prosecuted *And* that the
 sd C. D. shall pay &c. (*as before*, p. 311) which sd sum of
 £ I do adjudge and declare to be justly due from the sd
 C. D. to the sd A. B. for or upon the matters contd in the
 declarations in the sd cause subject nevss to this proviso that if
 on or before the sd day of the C. D. shall pay
 or discharge all or any pt of the balances due to the crs of the
 sd firm of A. B. and C. D. then upon delivering to the sd A. B.
 at the time and place afd proper recs and dischas for so much
 as he shall have so pd the same shall be taken and deemed as
 pymt of so much of the sd sum of £ as by the said
 recs and dischas shall be expssd to have been recd or orwise
 that he the sd C. D. shall pay the whole of the sd sum of
 £ to the sd A. B. who thereout shall pay and satisfy
 each balances to the sevl psns as afd *And* I do furr award
 order and direct That the said C. D. do and shall permit the sd
 A. B. to collect and rece for their jt use the sevl debts and
 sums of money as follow that is to say (*here state the names of*
be several debtors to the firm and the amount of their debts)
and I do furr award and direct That the said A. B. shall be at
 berty to bring any action or actions either in his own name or
 their jt names for the recovering of any debt or debts sum
 r sums of money hnbefe mentd But nevss if the sd A. B. shd
 ring any actions in the name of the sd C. D. witht his consent
 rst had and obtained that then the said A. B. shall save harm-
 es and indemnify the sd C. D. from all consequences chas and
 xps attending any such action if the same shd happen to fail
 und be fruitless *And* I do furr award order and direct That
 the sd A. B. shall not compound or compromise any action to
 be brought for the recovery of the sd debts or sums of money
 witht the consent of the sd C. D. in writing for that purpose
 first had and obtained *And* that the said A. B. shall within
 days after the payment of the sd sum of £ so
 awarded at his own expence enter into and deliver a bond to

No. CXLIII.
*Award under a
 Judge's Order.*

Award.

C. D. to pay
 A. B. a certain
 sum.

A. B. to collect
 in the debts &c.

No. CXLIII. *Award under a Judge's Order.*
 To give a bond to C. D. that he will account.

the sd C. D. in the penalty of £ with a condon thereunder written for making the same void in case he the sd A. B. shall give to the sd C. D. an acct of his proceedings in the collecting of the sd outstanding debts from time to time within six weeks after any request in writing so to do *And* shall also from time to time as the same debts are respdy recd pay to the sd C. D. one moiety thof all rease exps attending the collecting and receiving of the same being first deducted *And lastly* I do hby award order and direct That each of the sd pties shall and do bear and pay his own costs of this reference *And* that the costs of this our award be pd in equal moieties betn them^(a)
In witness &c., see ante, No. XLVI.

No. CXLIV.

Under Lord Chancellor's Order.
 Recital of Lord Chancellor's order.

No. CXLIV.

Award under a Submission by Order of the Lord Chancellor.

Award.

C. D. to pay balance due to A. B.

A. B. to execute conveyance.

To all &c. see last precedent Whas by a certain order made by the Ld High Chancellor of Gt Brit on the day of in the yr of &c. in a certain cause depending in the High Ct of Chancery wherein A. B. of &c. was plff and C. D. of &c. deft it was ordered by consent of the pties and their counsel &c. among other things that the settlmt of the accts and all or. matters in difference betn the sd pties shd be referred to me the sd (*arbitrator*) *Now know ye* that I the sd (*A.*) having taken upon myself (*see last precedent*) do hby award adjudge and declare the balance due from the sd C. D. to the sd A. B. upon such settlmt to be the sum of £ which sd sum I do award order and direct that the sd C. D. do and shall pay unto the sd A. B. at &c. *And* I do furr award order adjudge and determine that the sd A. B. shall within days after the payment of the sd sum of £ at the costs and expence of the sd C. D. exte such a good and effectual conveye and assurance of the messe or tent in the occupation of the sd A. B. situated &c. to and for the use of the sd C. D. or as he

(a) Where it is ordered by the rule of court, that the costs of the cause shall abide the event of the award, the arbitrator has no occasion to take notice of any costs but the costs of reference.

all direct and that he the sd C. D. shall upon the exon of the
 i conveye pay unto the sd A. B. the sum of £ as a
 onson for the same And lastly I do award &c. that the costs
 has and exps of the suit and reference and also of this my
 ward which I do adjudge to amount in the whole to the sum
 of £ shall be borne and pd by the sd pties in difference
 in equal moieties and proportions In witness &c. see ante,
 No. XLVI.

No. CXLIV.
 Under Lord
 Chancellor's
 Order.

Costs to be
 borne equally
 by the parties.

No. CXLIV.—2.

Award by an Umpire.

No. CXLIV. 2.

*Award by an
 Umpire.*

To all to whom these Prests shall come We (arbitrators) of
 do send greeting Whas A. B. of &c. and C. D. of &c. coptnrs
 have mutually entered into and reciprocally exted bonds or
 obligations to each other bearg date &c. in the penal sum of
 conditioned that the sd pties shd in all things well and
 truly stand to abide observe perform fulfil and keep the award
 order final end and determination of (arbitrators) arbitrators
 differently chosen by the sd pties of and concerning all and
 all manner of action and actions cause and causes of action
 bills bonds specialties [covts contracts promises accts rec-
 ommends sums of money judgmts exons extents quarrels contro-
 versies trespasses] dams and demands whatsr both in law and
 equity committed or depending by or betn the sd pties so as
 the award shd be made on or before the day of
 if the sd arbitrators shd not make such their award of and
 concerning the sd differences by the time afd then if the sd
 pties shd in all things well and truly stand to abide observe
 perform fulfil and keep the award order arbitrament umpirage
 final end and determination of such psn as shd hrfr be chosen
 by the sd arbitrators so as the sd umpire shd make his award
 umpirage of and concerning the same on or before the
 day of And whas the sd (A.) met upon the sd arbitration
 and did not make their award by the time limited in and by the
 conditions of the sd bonds and in pursuance thof have chosen
 and apppted me as umpire to settle and determine the matters

Recital of cross
 bonds to abide
 an award of
 arbitrators.

Or of umpire.

Appointment of
 umpire.

ARBITRATION.

No. CXLIV. 2. in difference betn the sd pties. Now Know ye That I the sd
Award by an Umpire.

Award.
A. B. to pay costs of a suit commenced by him.
And costs of reference.

(umpire) the umpire named and chosen as afd having taken upon me the burthen of the sd arbitration and having heard &c. of and concerning the sd disputes and differences betn them and fully considered the same do make this my award and umpirage in manner following that is to say I do award and order that the sd A. B. his exs or ads do and shall on the day of between the hours &c. pay or cause to be pd unto the sd C. D. the sum of £ in full for his dams and costs in a certain action lately commenced by him the sd A. B. agst the sd C. D. and also for the costs of and occasioned by this refer-
ence And upon paymt of the sd sum of £ I do award &c. (mutual releases.)

In witness &c. see ante, No. XLVI.

Award by a Commissioner under an Inclosure Act, see post,
AWARDS.

ARTICLES.

Articles of Clerkship, see *ante*, APPRENTICESHIP, No. CXXII.

Articles of Copartnership, see *post*, **COPARTNERSHIP**.

Articles for a Marriage Settlement, see ante, AGREEMENTS,
No. LXV.

ASSIGNMENTS.

- | | |
|--|----------------------------|
| 1. <i>Definition of an Assignment.</i> | 5. <i>How made.</i> |
| 2. <i>Leases, Annuities, &c. assignable.</i> | 6. <i>Operative Words.</i> |
| 3. <i>Offices of Trust not assignable.</i> | 7. <i>Stamp.</i> |
| 4. <i>What assignable by Statute.</i> | |

SECT. 1. An assignment is the transferring or setting over to another the interest a man hath in a thing; more particularly the transferring to another that particular interest which a man hath in any property wherein a third person not a party to the assignment has some right or interest.

Definition of an assignment.

2. Assignments are usually made of leases and estates for years. There may also be an assignment of an annuity or rent-charge, but judgments, statutes and *choses in action*, as debts, bonds &c. are not assignable by the common law, 10 Co. 48; Roll. Abr. 376. But courts of law will allow the assignee to sue in the name of the assignor, *Winch v. Keeley*, 1 T. R. 619. They may likewise be assigned in equity, 2 P. Wms. 608; 2 Vern. 595. So likewise, although by the common law no possibility or contingent interest could be assigned over to another, yet they are assignable in equity for a valuable consideration, *Wright v. Wright*, 1 Ves. 409; 1 Fonbl. Treat. of Eq. 103.

Leases, annuities, &c. assignable.

3. An office of trust cannot be assigned, Dy. 7; nor a personal trust, as that of guardian or trustee, Vaugh. 180; nor the full pay of an officer, *Flarty v. Odum*, 3 T. R. 681. So likewise the assignment of the half-pay of an officer is bad in equity as well as at law, *Stone v. Littledale*, 2 Anst. 533.

Offices of trust, &c. not assignable.

4. Some things, not assignable in their nature, are made so by statute; as promissory notes, by 3 & 4 Anne, c. 9; bail bonds by sheriffs, 4 & 5 Anne, c. 16; certificates for taking and prosecuting felons to conviction, 10 & 11 W. 3, c. 23; but see 7 G. 4, c. 64; Dig. p. ii. tit. ADMINISTRATION (JUSTICE); and a bankrupt's effects by the bankrupt laws. By 59 G. 3, c. 12, s. 30, overseers may, on application for parish relief by persons intitled to a pension or allowance, require them to assign to them the next payment which shall become due, by way of security for the repayment of what is advanced. No stamp is required upon such an assignment, see Dig. p. iii. tit. Poor; but otherwise the assignment of seamen's wages, half-pay, &c. is prohibited by 11 G. 4 & 1 W. 4, c. 20, s. 47; and see further as to assignments, Dig. p. i. tit. ASSIGNMENT.

What assignable by statute, or otherwise.

5. Since the Statute of Frauds, it is requisite to the validity of an

How made.

Assignments.
Operative
words.

assignment of an estate in land, that it should be in writing (see *Assignment of a Lease*). The operative words in assignments are "give, grant, bargain, sell, assign, transfer and set over;" but all these words are not necessary, and are but rarely used. In the case of mortgagees and trustees, the words "give and grant" are mostly omitted. When therefore they join in an assignment, words of grant are for the most part mentioned in distinct clauses, thus, "A. B. (mortgagee or trustee) at the instance and request of C. D. (owner, mortgagor &c.) hath bargained &c." and the owner &c. "hath granted, bargained &c., ratified and confirmed." Sometimes, to rebut the imputation of warranty, the words of grant are qualified by the clause, "by way of assignment (or other assurance) only, and not of covenant or warranty;" or sometimes by the clause, "according to his (the mortgagee's &c.) right, title and interest, and no further or otherwise."

6. By the 44 G. 3, c. 98, amended by the 55 G. 3, c. 184, the ad valorem duty is chargeable on assignments as on any other conveyance; but where the assignment is not otherwise charged, or is not exempt from all duty, then the duty of 1*l.* 15*s.*, and the further progressive duty of 1*l.* 5*s.*, is charged.

No. CXLV.
Agreement.

No. CXLV.

Assignment of an Agreement for the Purchase of an Estate.

Recital of articles.

This Indre made &c. see *ante*, No. LXXXV. Betn (*assignor*) of &c. of the one pt and (*assignee*) of &c. of the or. pt *Whas* by articles of agreement bearing date the day of last and made or expsd to be made betn (*vendor*) of &c. of the one pt and the sd (*assignor*) of the other pt It is witnessed that the said (*V.*) did for the consons therein mentd agree to sell unto the sd (*assignor*) all those messes &c. as by the sd articles reference being thereto had will more fully appear *Now this Indre witnesseth* That in conson of the sum of £ to the sd (*assignor*) well and truly pd by the sd (*assignee*) the rect of which is hby ackngd He the sd (*assignor*) Hath granted bargained sold assigned transferred and set over and by these prests Doth grant &c. All those the sd recited articles of agt and all the este right and title benefit advantage property claim

Testatum.

and whatsr of him the sd (*assignor*) of in or to the same
and to Hold the sd articles and all bent and advantage
in as full ample and beneficial a manner as he the sd
r) could or might have been intituled to the same if these
had not been made *And* the sd (*assignor*) doth hby
ominate and constitute the sd (*assignee*) his exs &c. his
l lful atty and atties irrevocable in his name but for the
and bent of him the sd (*assignee*) to do perform and exte
ct matter and thing whatsr requisite and necessary for
g the sd articles of agrt into full effect *Provided nevss*
is hby decl'd and agr'd by and betn the sd pties hereto
e sd (*assignee*) shall and will at all times indemnify and
rmless the sd (*assignor*) his hrs exs ads and ass from
t all costs chas and dams which he they or any of them
may pay sustain or be put unto by reason of any action
in pursuance of the power hnbefe given *And* the sd
r) for himself his hrs exs and ads doth hby covt with
the sd (*assignee*) in manner following that is to say
r and notwithstanding any matter or thing by him done
or knowingly suffered the sd in pt recited agrt is a
nd valid agrt and not in anywise forfeited surrendered
se made void *And* that he the sd (*assignor*) hath full
and lful authority to assign and assure the same *And*
t he the sd (*assignor*) his hrs exs and ads shall and will
ime hrafter upon rease request and at the costs and chas
sd (*assignee*) do and perform all such furr and or. acts
better and more fully and satisfactorily assigning and
g the sd agrt as by the sd (*assignee*) his hrs &c. or by his or
unsel in the law shall be advised and required *And* the
gnee) for himself his hrs exs and ads doth hby covt &c.
e sd (*assignor*) his hrs &c. That he the sd (*assignee*) shall
ll well and truly pay perform observe and keep all and
he sum and sums of money covts agrts provos and con-
sply which are mentd or contd in the sd in pt recited
In witness &c. see ante, No. XLVI.

No. CXLV.
Agreement.

Habendum.

Power of at-
torney.

Indemnity to
assignor.

Agreement
valid.

Further assu-
rance.

Assignee to per-
form covenants
of the agree-
ment.

No. CXLVI.
Agreement.

No. CXLVI.

*Assignment of an Agreement for the Sale of Timber for securing
the Payment of Debts (by Indorsement).*

Assignment.

Habendum.

Upon trust.

Know all Men That I (assignor) of &c. for the furr and better securing the payment of all the debts mentd and contd in the schedule hereunto annexed Have granted bargained sold and assigned and do hby grant &c. unto the sd (assignee) of &c. his exs &c. All those the within written articles and all monies hrfr due or to be pd thereon and the full bent profit and advantage thereof from and after the day of last past Have and to Hold the sd articles and all the sd monies due and payable thereon and the full bent profit and advantage thereof unto the sd (assignee) his exs ads and ass Upon the Trusts hereinafter expssd and decld of and concerning the same that is to say Upon Trust That he the sd (assignor) do and shall receive and take of and from the within-named (vendor) all such sum and sums of money as shall become due and payable by force and virtue of the within written articles and pay and apply the same money in discharge of the costs and chas of the trusts hby created Then upon and after paymt of the same in Trust to pay and discharge the principal money and int due to the seprsn in the schedule hereunto annexed or so far as the same will extend in rateable proportions And for the purposes aforesaid I the sd (assignor) Have made &c. (Power of Attorney, see last Precedent) to ask demand sue for recover and rece all such sum and sums &c. which shall grow due and paye &c. and to make do and exte all such or. acts and deeds for the better enabling the sd (assignee) his exs &c. to recover and rece all such sums &c. as the sd (assignee) his &c. or his counsel in the law shall advise or require I the sd (assignor) agreeing to ratify and confirm whatsr shall be lfully done in and about the preses In witness &c.

Assignment of an Annuity, see ante, No. XCII. ANNUITY.

No. CXLVII.

No. CXLVII.
Annuity.

*Assignment of an Annuity by a Wife to Executors for discharging
her Husband's Debt to the Testator.*

This Indenture made &c. see *ante*, No. LXXXV. Betn (*as-*
gnor) wife of (*husband*) of &c. of the first pt the sd (*husband*)
the second pt and (*executors*) of the third pt *Whas* I. S. late
&c. decd duly made and published his last will and testament
writing bearing date &c. and did thby bequeath unto the sd
signor) during the term of her natural life one annuity or
ar yrly sum of £ of lful &c. paye quarterly free and clear
the legacy duty and all or. taxes and deductions whatsr And
e sd testator apptd the sd (*executors*) executors of his will And
has the sd I. S. departed this life on or about day of
tht having altered or revoked his sd will and shortly after his
ce the sd will was duly proved by the sd (*E.*) in the Consis-
ry Court of *And whas* the sd (*H.*) was indebted to the
I. S. at the time of his dece in the principal sum of £
cured to the sd I. S. by the bond of the sd (*H.*) dated the
ry of in the penal sum of £ *And whas* by bond under
e hand and seal of the sd (*H.*) bearg date the &c. the sd (*H.*)
ecame bd unto the sd (*E.*) as executors afd in the sd sum of
with a condon thereunder written by which after reciting
he sd bond dated the &c. and the will and death of the sd I. S.
and after reciting that all interest due on the sd sum of £
ad been duly pd up to the date of the now reciting bond but
bat as it was not in the power of him the sd (*H.*) to pay off the
d sum of £ in any or. way than by instalments after the
ate of £ *per ann.* with int they the sd (*E.*) had agrd to
accept paymt thof in that way *It is decld* that if the sd (*H.*)
his hrs exs or ads shd pay unto the sd (*E.*) or unto the survors
x survivor of them his or her exs or ads the sum of £ with
int for the same after the rate of £ for evy 100l. by the year
by instalments on the days and times and in manner thin mentd
that is to say the sum of £ with half a yr's int on the sd sum
of £ on the day of thence next ensuing the further
sum of £ with half a yr's int on the then remaining pt of the
sd principal sum of £ on &c. *And also* shd on the day of

Recital of grant
of annuity to
wife.

Death of testa-
tor.

Debt from hus-
band to testator.

Bond from hus-
band to execu-
tors.

Executors agree
to be paid by
instalments.

No. CXLVII. and the day of in each succeeding yr by half-yr
Annuity. paymts pay the like sum *And whas* the paymt of the sd su
Judgment en- of £ and int by instalments as hnbefe mentd was furr se
tered up on to the sd (E.) as exs as afd by a warrant of atty under the ha
warrant of at- and seal of the sd (H.) bearg date &c. for confessing judgme
torney. against him in an action of debt in the court of C. P. at Wes
 at the suit of the sd (E.) for the sd sum of £ *And whas* n
 part of the sd sum of £ hath been pd by the sd (H.) pursuar
 to the condon in the sd recited bond of day and in cor
 sequence of such deft in paymt the sd (E.) entered up judg
 ment pursuant to the sd warrant of atty for the sum of £
 and costs of suit but no exon hath been sued out on the
 judgment *And whas* all int hath been pd up to the day of th
Agreement on date of these prests *And whas* the sd (H.) being at prese
the part of wife unable to pay any pt of the sd principal sum of £ the
to assign her (assignor) at his request hath agrd to transfer the sd annnty
annuity to exe- yrly sum of £ bequeathed to her as afd unto the sd (£
cutors. Upon such trusts as are hnafter decld for securing the paym
 of the sd sum of £ and the int thof by instalments *And*
 conson thof the sd (E.) have agrd to enter into the covts hnaft
 contd for postponing the enforcement of the immediate paym
Testatum. of the sd sum of £ in manner hnaft mentd *Now this Indr*
 witnesseth That in pursuance of the sd recited agrt on the pt
 the sd (A.) and in conson of 5s. of lful &c. to the sd (A.) i
 hand pd by the sd (E.) at &c. the sd (A.) at the request an
 by the direction of the sd (H.) testified by his being a pty
 and exting these prests *Hath* given granted bargained sold a
 signed transferred and set over and by these prests *Doth gra*
 &c. unto the sd (E.) *All that* the sd annnty or yrly sum of £
 in and by the sd recited will of the sd I. S. decd given and b
 queathed to the sd (A.) as afd Togr with all powers remedie
 and means whatsr requisite and necessary for recovering n
 ceiving and giving effectual rects releases and discharges for th
 same annnty and every part thereof *And* all the right title an
 int trust property claim and demand whatsr of her the sd (A
 in to and out of the same annnty or yrly sum of £ and a
Habendum. arrears and growing paymts thof *To Have Hold* rece perceiv
 take and enjoy the sd annnty or yrly sum of £ and the ar
 rears and growing paymts thof Togr with the sd powers reme

lies and means for recovering and enforcing paymts thof as afd
 into the sd (E.) their exs ads and ass henceforth during the
 life of the sd (A.) *Nevs* upon and for the trusts intents and
 purps hnaft expressed and decl'd of and concerning the same
 hat is to say *Upon Trust* that they the sd (E.) or the survivors
 or survivors of them or the exs ads or ass of such survivor do and
 shall from time to time when and as the sd annty or yrly sum
 of £ shall become paye rece and retain the same annty and
 any pt thof And shall and do yrly and evy yr until the whole
 of the principal sum of £ and the int upon or in repect of
 the same shall be fully pd and satisfied [in case the sd (A.) shd
 no long live] by and out of the sd annty or yrly sum of £
 pay and satisfy unto the sd psnl reptives or reptive for the time
 being of the sd I. S. decd the int which at the end of each half
 yr shall be due and paye upon the sd sum of £ or upon so
 much thof as shall from time to time be remaining unpd The
 first half yrly paymt of int to be made at the end of six calr
 months to be computed from the day of last past And
 also at the end of each succeeding half yr by and out of the sd
 annty or yrly sum of £ pay and satisfy unto the psnl reptives
 or reptive for the time being of the sd I. S. decd the sum of
 £ in or towards the paymt or satisfaction of so much of the
 sd sum of £ by way of half yrly instalments And subject
 and witht prejudice to the paymnts afd *Upon Trust* that they
 the sd (E.) their exs ads and ass shall and do stand possd of
 and interested in the sd annty or yrly sum of £ or so much
 thof as shall not be disposed of under the trusts afd *In Trust*
 for the sd (A.) and her ass And it is hby agrd and decl'd betn
 and by the sd pties hereto that the rect or rects of the sd (E.)
 or of the survivors or survivor of them or the exs ads or ass of such
 survivor shall be a good and effectual discharge for the sd annty
 or yrly sum of £ unto the psn or psns paying the same for
 as much thof as in such rect or rects shall be expsd or ackngd
 to be recd and that the psn or psns paying the sd annty or yrly
 sum or any pt thof and taking such a rect or rects for the same
 as afd shall not be bound or obliged to see to the applicon or
 be anywise answerable or accountable for the loss misapplicon
 or nonapplicon of the money which in such rect or rects shall
 be expsd to be recd or any pt thof And the sd (A.) doth hby

No. CXLVII.
Annuity.

To executors.

Upon trust.

To pay princi-
 pal, debt and
 interest by an-
 nual instal-
 ments.

To pay surplus
 to assignor.

Trustees to give
 receipts.

Covenants from
 assignor.

For farther assurance.

Covenants from the executors.

Not to put bond in force

until after the death of assignor.

And moreover that she the sd (A.) and her ass shall from time to time and at all times during her life at th of the sd (E.) or &c. but at the costs and chas in the l sd (A.) or her ass make do and exte all such furr ac signing and assuring the sd anny or yearly sum of £ assd or intended so to be as afd unto the sd (E.) their and ass upon the trusts and in manner afd as by th their exs ads and ass or their counsel in the law shall b advised devised or required *Provided* that the psn or j shall be required to make and exte such furr assurance rances be not compelled or compellable for the making thof to go or travel from his her or their usual dwellin in conson of the preses the sd (E.) for themselves sevlly their respive hrs exs and ads do hby covt with the sd hrs exs and ads and evy of them That they the sd (E of them or any of their hrs exs ads or ass or the exs a of the sd I. S. decd shall not nor will at any time during of the sd (A.) put the sd bonds or either of them in bring commence or prosecute any suit or or. proceeding or in equity agst the sd (H.) his hrs exs or ads for re or compelling paymt of the sd sum of £ or any pt the int thof or upon or by virtue of the sd judgment so up agst the sd (H.) in pursuance of the sd warrant of at *Provided always* and it is hby decld and agrd by and l pties hereto that in case the sd (A.) shall happen to di the whole of the sd principal sum of £ and all int up

pute any action suit or or. proceeding at law or in equity agst
e sd (H.) his exs or ads for recovering and enforcing paymt
the sd sum of £ or any pt thof or the int thof *In wit-*
es &c. see ante, No. XLVI.

No. CXLVII.
Annuity.

No. CXLVIII.

Assignment of an Annuity by Indorsement.

No. CXLVIII.
*Annuity by
Indorsement.*

To all to whom these Presents shall come (assignor) of &c.
meth greeting Whas all arrears of the within mentioned
nty yrly rent-charge or annual sum of £ by the within
ritten indre granted to him the sd (assignor) his exs ads and ass
ring the term of his natural life as within mentd have been
illy pd and satisfied to the sd (assignor) up to the day of the
the hof Now know ye That in conson of the sum of £ of
z. by the sd (assignee) to the sd (assignor) well and truly pd
is rect of which is hby ackngd he the sd (assignor) Hath
anted bargained sold assigned &c. and by &c. doth grant &c.
the sd annty or yrly sum of £ paye and issuing out of
he messe and preses within mentd And also all the este right
claim and demand whatsr of him the said (assignor) of in and
&c. To Have &c. the sd annty &c. unto the sd (assignee) his
&c. during the term of the natural life of the sd (assignor)
with full power and authority for him the sd (assignee) his exs
&c. to recover and rece the same in as large ample and beneficial
manner to all intents and purps as he the sd (assignor) might
ould should or ought to have enjoyed the same if these prests
had not been made And the sd (assignor) for himself &c. doth
by covt promise and agree &c. that he the sd (assignor) hath
good right and full power to assign the sd annty of &c. And
also that he hath not heretofore charged discharged or incum-
bered the sd annty or yrly sum hby assd or intended so to be
And also that he the sd (assignee) his exs &c. shall and lfully
may peaceably and quietly have hold rece and enjoy the sd annty
or rent-charge of £ to and for the proper use and bent of
him the sd (assignee) his exs &c. witht any let suit trouble hin-
derance molestation or interruption whatsr of from or by him the
sd (assignor) his exs &c. or any or. psn or psns whatsr and that

*Recital that all
arrears are paid.*

Habendum.

*Covenants from
assignor.
Good right to
assign.*

*Quiet enjoy-
ment.*

No. CXLVIII. *free and clear and freely clearly and absolutely discharged and exonerated from all chas and incumbrances whater And furr that he the sd (assignor) his exs (Covenant for further Assurance as in last precedent.)*

Annuity by Indorsement.

Free from incumbrances.

In witness &c. see ante, No. XLVI.

No. CXLIX.

Exchequer Annuities.

No. CXLIX.

Assignment of Exchequer Annuities.

Know all Men by these Presents That for and in conson of the sum of £ to me (assignor) of &c. in hand well and truly pd by (assignee) of &c. the rect whof is hby ackdgd I the sd (assignor) Have granted bargained sold &c. and by these prests Do grant &c. unto the sd (assignee) of &c. the several orders bearing date &c. made unto and in the name of me the sd (assignor) by virtue and in pursuance of an Act of Parliament passed in the yr &c. intitld &c. in conson of the respive sums therein pd by me into the rect of her Maj. Exchequer for the same which orders are of the sevl numbers and for the sevl annities or yrly sums paye by four equal quarterly paymts for the term of yrs to be computed from the &c. as follows viz. one number (set out the several numbers) Togr with the sevl tallies made and struck for the purchase-money of the sd respive annuities And also the sd annities or yrly sums paye by or upon the sd orders resply during the residue of the sd term of yrs resply and all the este &c. of me the sd (assignor) of and in the sd sevl orders tallies and annities afd To Have &c. the sd sevl annities and evy of them and evy pt thof unto the sd (assignee) his exs ads and ass to his and their proper use and bent for and during the residue &c. of the sd term of yrs yet to come and unexpired in as ample and beneficial a manner as the sd (assignor) could have enjoyed the same if these prests had not been made free and clear from all charges and incumbrances made done or committed by me the sd (assignor) or any or. psn or psns whomsr

In witness &c.

No. CL.

No. CL.
Articles of
Clerkship.

Assignment of Articles of Clerkship to surviving Partner.

Obs. As to the assignment of articles of clerkship, see Pref. sect. 1
No. CXXIV.; and as to the stamp, ib. sect. 2.

This Indre &c. see *ante*, No. LXXXV. Betn E. F. of &c.
pinster of the first pt W. D. the younger of &c. of the second
t W. D. the elder of &c. merchant and father of the sd W. D.
he younger of the third part and G. F. of &c. gent. one of the
tties of her Maj. Cts of Q. B. and C. P. at Westr and brother
nd late copartner of W. F. decd of the fourth pt *Whas* by an
tre of clkshp bearing date the day of and made
in the sd W. F. decd late one of the atties &c. as afd of the
pt and the sd W. D. the elder and W. D. the younger of the
pt the sd W. D. the younger with the consent and approba-
on of his sd father testified as is thin-mentd did put place and
ad himself clk to the sd W. F. to serve him in the practice of
atty at law and solicitor in chancery from the day of the
te of the sd indre for and during the term of five yrs from
nce next ensuing and under and subject to such covts articles
d agrts as in the sd indre mentd *And whas* the sd W. F.
parted this life on or about the day of
st past having duly made and published his last will and
ntmt in writing bearg date the day of the same mth of
 and thby named and apptd his sister the sd E. F. his
ecatrix of his sd will who on or about the day of the
st mth duly proved the same in the Prerogative Ct of the
chbship of Canty *Now this Indre witnesseth* That the sd
F. for divers good causes and consons her thereunto moving
ad also in conson of 10s. &c. at the desire of the sd W. D. the
younger and with the consent and approbation of the sd W. D.
the elder testified by their sevly exting these prests *Hath* assd
transferred and set over *And* by these prests *Doth* assign &c.
unto the sd G. F. his exs ads and ass as well the sd recited
ndre of clkshp and all bent thof as also all the right int service
prf advantage claim and demand whatsr or howsr to arise or
be had from henceforth of the service of the sd W. D. the younger
during the now residue of the sd term of five yrs by force and
virtue of the sd recited indre or orwise howsr subject nevss to

Recital of ar-
ticles of clerk-
ship.

accepted in as ample and beneficial a manner to a
and purps as she the sd E. F. can or may assign the
nevss subject as is hinbefe-mentd And the sd V
younger doth hby covt and agree with the sd G. F. hi
ads that he the sd W. D. &c. shall and will well and t
the sd G. F. during the residue of the sd term of five
such clk as afd and truly observe perform and kee
singr the covts articles and agrts in the sd indre
mentd and on his pt and behalf to be done and perfor

In witness &c. see ante, No. XLVI.

No. CLI.

By Indorsement.

No. CLI.

Assignment of Articles of Clerkship by Indorsement

Assignment to
new principal.

Know all Men by these Prests That the sd with
pties having mutually agrd to vacate the within-written
the within-named (*assignor*) at the request and by and
approbation of the within-named (*clerk's father*) ar
testified by their sevly signing and sealing these pr
assigned and turned over the sd (C.) to (*assignee*) of
to serve him as his clk under the condons within-ment
remdr of the within-mentd term of yrs A
(*assignee*) in conson of £ in hand well and tr
the sd (*assignor* or *clerk's father, or otherwise as the*
be) *Hath* accepted taken and recd him the within-na
to continue and be with him as his clerk during the
the within-mentd term of yrs under the condo

Assignment by Assignees and Bankrupt, see post,
BANKRUPTCY.

No. CLII.

No. CLII.
Bill of Sale.

Assignment of a Bill of Sale of Goods.

Obs. 1. As to the nature of a bill of sale, see **BILLS OF SALE.**

An *ad valorem* stamp on the consideration money.

Stamp.

To all to whom these Presents shall come (vendor) of &c. Recital of sale
Ieth greeting *Whas (vendor) of &c.* in and by his deed or
of sale under his hand bearg date &c. did for the conson
to venditor.

expressed bargain sell and deliver unto me the sd (*assignor*)
exs ads and ass all and evy the goods implements and wares
aining and being &c. as in the schedule or inventory to the
e deed or bill of sale annexed are more parlarly expssd
w *know ye* That in conson of the sum of £

Testatum.

hand to me well and truly pd by (*assignee*) of &c. the rect
I the sd (*assignor*) *Have* granted bargained sold assigned
nsferred and set over and by these presents in plain and
n market *Do* grant &c. *All* and evy the goods wares and
lements in the above-recited bill of sale and in the schedule
reunto annexed mentd and hby bargd and sold or expssd
be so as afd *To Have and to Hold* unto the sd (*assignee*)

Habendum.

exs ads and ass all and evy the goods wares and imple-
nts in the above recited bill of sale and schedule mentd and
std to and for his and their own bent and as his and their
per goods and chattels from henceforth for ever *And* I the
(*assignor*) do hby for myself my exs &c. covt &c. with the sd
signee) his &c. That the sd deed or bill of sale is a good and
fid instrument and that the preses hby assd or orwise assured
intended so to be with the appts are and shall remain and
stinue unto the sd (*assignor*) his exs ads and ass free and
ar of and from all former and or. rights titles chas liens and
umbrances whatsr done committed or suffered by the sd
signor) and the sd (*vendor*) or any or. psn whatsr
in witness &c. see *ante*, No. XLVI.

Free from in-
cumbrances.

No. CL.
Articles of
Clerkship.

the sevl covts articles and agrts mentd and contd in the sd recited indre on the pt of the sd W. F. his exs ads or ass to be done and performed *To Have and to Hold* the sd indre of clkshp and all bent and advantage to arise therefrom unto the the sd G. F. his exs ads and ass from henceforth for and during all the residue of the sd term of five years now to come and unexpired in as ample and beneficial a manner to all intents and purps as she the sd E. F. can or may assign the same but nevss subject as is hinbefe-mentd *And* the sd W. D. the younger doth hby covt and agree with the sd G. F. his exs and ads that he the sd W. D. &c. shall and will well and truly ~~serve~~ the sd G. F. during the residue of the sd term of five years as such clk as afd and truly observe perform and keep ~~all and~~ singr the covts articles and agrts in the sd indre of ~~clerk~~ mentd and on his pt and behalf to be done and performed.

In witness &c. see ante, No. XLVI.

No. CLI.
By Indorsement.

No. CLI.

Assignment of Articles of Clerkship by Indorsement.

Assignment to
new principal.

Release from
assignor, father
and clerk.

Know all Men by these Prests That the sd within-named pties having mutually agrd to vacate the within-written contract the within-named (*assignor*) at the request and by and with the approbation of the within-named (*clerk's father*) and (*clerk*) testified by their sevlly signing and sealing these prests *Hath* assigned and turned over the sd (C.) to (*assignee*) of &c. gent. to serve him as his clk under the condons within-mentd for the remdr of the within-mentd term of yrs *And* the sd (*assignee*) in conson of £ in hand well and truly pd by the sd (*assignor* or *clerk's father, or otherwise as the case may be*) *Hath* accepted taken and recd him the within-named (C.) to continue and be with him as his clerk during the remdr of the within-mentd term of yrs under the condons in the within-written articles mentd *And* in conson of the preses they the sd (*assignor, father and clerk*) do hby for themselves and their sevl exs ads and ass mutually release each or. their exs and ads of and from the within-written articles and the performance of all the covts and agts thin contd *In witness &c.*

ASSIGNMENTS OF BONDS.

is not assignable at Law.
deemed satisfied, when.

3. Notice to Obligor.
4. Stamp.

1. Bonds, being *choses in action*, so called because they cannot be reduced into possession except in due course of law, are not assignable by the common law, 1 Inst. 232; therefore if on assignment an action is brought, it must be brought in the name of the obligee, and for the same reason a power of attorney and a covenant from the obligee not to release the debt or revoke his power form a part of every such deed.

Bonds not assignable at law.

2. An assignment of a bond should be taken, unless there be evidence that the debt is still subsisting, as the courts have made it a duty to direct the jury to find a bond satisfied after a lapse of twenty years without demand or acknowledgment, 1 Ves. 51. This is confirmed by 3 & 4 W. 4, c. 42, s. 3, which provides that no action of covenant shall be brought upon any bond or other specialty within twenty years.

Bond deemed satisfied, when.

3. In an assignment of a bond, notice must be given to the obligor, so that payment by him to the obligee will be good. As to the assignment of bonds and other *choses in action*, see further ASSIGNMENTS, Pref. sect. 2.

Notice to obligor.

4. An *ad valorem* duty on the consideration money, see Pref. Stamp.

CLIII.

No. CLIII.

Assignment of a Bond.

Bond.

1. *Indre* made &c. see *ante*, No. LXXXV. Betn (*assignor*) of the one pt and (*assignee*) of &c. of the or. pt *Whas* (or) of &c. by a certain bond or obligon under his hand and duly exted bearing date on or about the day of e bd to the sd (*assignor*) in the penal sum of £ of &c. condon thereunder written to be void on paymt by sd (or) unto the sd (*assignor*) his exs ads or ass of the full sum as by the sd bond or obligon reference being thereto will more fully appear *And whas* the sd (*assignee*) hath o pay to the sd (*assignor*) the sum of £ upon having assignment made to him the sd (*assignee*) of the sd in pt re-bond and all principal and int due and to become due

Recital of bond.

Agreement to advance money.

it he the sd (*assignee*) his &c. shall and will at all times indemnify the sd (*assignor*) his &c. of from and agst all costs charges and dams which he or they or any of them shall pay suffer or be put unto for or by reason or on acct of any proceedings to be had either at law or in equity on acct of the presences or means of these pretexts so as the same do not arise or issue through the collusion or act of the sd (*assignor*) his &c. *Witness &c. see ante*, No. XLVI.

No. CLIII.
Bond.

No. CLIV.

Assignment of a Bond and Judgment by a Husband and a Wife as a Security for a Debt.

No. CLIV.
Bond and Judgment.

As. Bonds, being *choses in action*, a husband has not the power of signing them; he has only the power of reducing them into possession during his life. If he assign them, the assignee standing in his place may, during his life, sue in the name of the husband; but if he die before the assignee has reduced them into possession, the right of action will survive to the wife, 1 Rep. Hus. & W. 225; and equity will not support the husband's assignment of a wife's bond, though made for a valuable consideration, *Burnet v. Kinaston*, 2 M. 239; S. C. 2 Vern. 401; Prec. in Cha. 121; *Parker* (in ex. Cha. 412, *nom. Packer*) v. *Wyndham*, Gilb. Rep. Eq. 98.

To all to whom these Pretexts shall come (assignor) of &c. and his wife late (maiden name) of &c. spinster send greeting Whas (assignor) of &c. in or by one bond &c. became bound unto the sd (assignor's maiden name) before her intermarriage with the sd (assignor) in the penal sum of £ conditioned for the payment of and interest at a day long since past (a) And whas debt was levied in payment of the sd sum of £ and interest on the day mentioned the condon of the sd in part recited bond and the sd (assignor) in term last past obtain a judgment in her Majesty's Court of Westminster in an action of debt on the sd bond for the sum of

Recital of bond.

1) If it be a judgment obtained on a warrant of attorney, say, "And whas the better securing the payment of the sd sum of £ the sd (*obligor*) extend a warrant of attorney bearing even date with the sd bond authorizing certain attornies herein-named to confess judgment thereupon in her Majesty's Court of And whas judgment was confessed and entered on record of the sd court as of term next ensuing as by reference thereto will more fully appear."

No. CLIV.
Bond and Judg-
ment.

Testatum.

Habendum.

Power of attor-
ney.

£ besides costs of suit agst him the sd (*obligor*) as record of the judgment entered up in the same court ref being thereto had will more fully appear *And whas* the *signor*) having occasion to borrow the sum of £ ha requested the sd (*assignee*) to advance the same and he hat so to do on having the sd in pt recited bond or obligon with the sd (*a*) judgment assd to him as a secty for the re thof *Now Know ye* That in conson of &c. to the sd (*as* and S. his wife or one of them in hand pd by the & rect of which the sd (*assignor*) and S. his wife do hby a and of and from the same do acquit and discharge the *signee*) his exs &c. He the sd (*assignor*) and S. his wife granted bargained sold &c. and by &c. *do* grant &c. unto (*assignee*) his exs ads and ass *All that* the hnbefe recited or obligon as also the principal and int thereon secured and all and evy other sum or sums of money now due or at any future time shall become due and paye on the sam with the sd judgment (*b*) so recovered thereupon as afd i bent and advantage to be had or derived thereon and all ti right title int property claim and demand whatsr of & *Have* &c. the sd bond &c. and the sd judgment and all an the sum and sums of money thereon secd and hby assd i tended so to be unto and for the only use and bent of h sd (*assignee*) his exs &c. for his and their own proper use full and ample a manner to all intents and purps as they (*assignor*) and S. his wife or either of them could or migh held or enjoyed the same had not these prests been made this condon nevss and it is the true intent and meaning o prests that if they the sd (*assignor*) and S. his wife or ei them or either of their exs ads or ass shall and do well an pay or cause to be pd unto the sd (*assignee*) his exs ads the full sum of £ on the day of next e Then he the sd (*assignee*) his exs &c. is or are to deliver sd bond or obligon and judgmt and these prests are to b celled and made void any thing either at law or in equity contained to the contrary thof in anywise notwithstg A: sd (*assignor*) and S. his wife do hby constitute the sd (*as*

(a) Or, "the sd warrant of atty and judgmt."

(b) Or, "so entered up."

his and their true &c. atty or atties in their names or in the names of their exs but for the sole and proper use and bent of the sd (assignee) his exs &c. to ask demand and rece all such m and sums of money as now are or shall become due and paye on the sd bond &c. from and after the sd day of next ensuing in case the sd sum of £ shd not then be fully pd and satisfied And upon nonpaymt thof or of any pt of to sue and prosecute to effect any exon or exons or or. pro-ss whatsr as shall be deemed necessary and expedient for re-iving and recovering the same And on paymt thof to deliver and cancel the sd bond and to give discharges for the same and to acknge or cause to be ackngd satisfaction upon the sd dgment and to do and act in evy thing relating to the same as the sd (assignor) and S. his wife or either of them might or could have done had not these prests been made He the sd (assignee) his exs ads and ass rendering and paying to them the sd (as-ignor) and S. his wife or either of them their or either of their m ads or ass the surplus or remr of the sd money that shall come due and paye to them the sd (assignor) and S. his wife or either of them on the sd bond and which he the sd (assignee) shall rece thereupon after deducting what shall be due and owing to the sd (assignee) at the time of such pt and paymt And the sd (assignor) and S. his wife for him- self and herself and for their exs ads and ass do and each of them doth covt promise and agree with and to the sd (assignee) his exs ads and ass that they the sd (assignor) and S. his wife or either of them or their or either of their exs &c. shall &c. pay &c. had that the sd bond &c. (is still subsisting &c. and for further insurance, as in the two last precedents).

No. CLIV.
Bond and Judg-
ment.

Covenants from
the assignor and
his wife.

To pay debt, &c.

No. CLV.

Assignment of a Mortgage Bond by Indorsement thereon to keep the same on Foot against the Heirs of the Mortgagor.

No. CLV.
Mortgage Bond.

To all to whom these Prests shall come I the within named (mortgagee) of &c. send greeting Whas (assignee) of &c. hath on the day of the date hereof pd unto me all prin-

Recital of pay-
ment of mort-
gage money.

No. CLV.
Mortgage Bond.

Testatum.

Power of at-
torney.

Covenant to
indemnify as-
signor.

cipal and int monies secd unto me by the within written bond and indre of mtge bearing even date therewith and within likewise mentd and I the sd (*mortgagee*) in conson thof by indre tripartite of assignment bearing even date with these prests and made betn me the sd (*mortgagee*) of the one pt Dame (*widow*) widow and relict of the within named (*mortgagor*) of the second pt and the sd (*assignee*) of the third pt have assd unto the sd (*assignee*) his &c. the sd indre of mtge and all and singr the lds &c. thby demised and all my este &c. *Now these Prests witness* That I the sd (*M.*) in conson of the preses and to the intent that the within written bond may be assd and kept on foot and that the sd (*A.*) his exs &c. may have full bent thof *Do* hby assign and transfer unto the sd (*A.*) his &c. the within written bond and all sum and sums of money thby secd and now due or to become due and paye by virtue thof and all bent and advantage whatsr for or in respect of the same *And* I do hby authorize the sd (*A.*) his &c. in my name to ask demand sue for recover and rece all principal and int money due and to become due by virtue of this bond and to take all lful means of recovering and receiving and discharging the same as fully and effectually to all intents and purps whatsr as I the sd (*M.*) could or might have done if these prests had not been made *Provided* I the sd (*M.*) my hrs exs ads and ass are saved harmless and kept indemnified by the sd (*A.*) his &c. of and from all costs and dams which shall or may happen by virtue of any power hby given *In witness* &c. see *ante*, No. XLVI.

—◆—

Assignment of a Bond and Policy of Insurance to Trustees of a Marriage Settlement, upon the Trusts to be declared by Settlement, see post, SETTLEMENTS.

—◆—

No. CLVI.
Cargo.

Recital of the
cargo.

No. CLVI.

Assignment of Part of the Cargo of a Ship.

To all to whom these Prests shall come (assignors) of &c.
Whas there is a cargo or adventure of timber on board the ship .

lying at called of the burden tons or thereabouts of which the sd (*assignors*) are part owners And *whas* the sd (*assignee*) of &c. hath agrd to pay the sum of £ for one pt of the sd cargo Now *Know ye* That in conson of the sum of £ so pd at or before &c. the rect whof is hby ackngd They the sd (*assignors*) Have granted bargained sold &c. and by &c. Do grant &c. unto the sd (*assignee*) his exs &c. All that one all and equal half pt of the sd cargo on board the sd ship and of all the produce proceeds effects gains and advantage in respect thof and all the right &c. of in and to the same To Have &c. unto the sd (*assignee*) his exs &c. to his and their own use and as his and their proper goods and chattels for ever And they the sd (*assignors*) do jtlly and sevly covt &c. with the sd (*assignee*) his &c. in manner following that is to say That the sd (*assignee*) his &c. shall and may at all times hrafr have take use and enjoy to his and their own proper use and bent all and by the produce proceeds effects pft and advantage by and in respect of the sd cargo or adventure of timber laden in the sd ship witht any let suit trouble denial or interruption of from or by the sd (*assignors*) their exs &c. And that free and clear of all former bargains sales assnmts debts chas and incumbs whatsr by them or either of them committed done or suffered And that they the sd (*assignors*) their exs &c. will at all times hrafr do perform and exte such furr acts deeds and things for the better assigning and assuring the sd preses hby sold and assd unto the sd (*assignee*) his &c. and for enabling him and them to demand and rece the same to his and their own proper use and bent as by him or them or his or their counsel shall be reably advised and required In witness &c. see *ante*, No. XLVI.

No. CLVI.
Cargo.

Covenants from
assignors.

Quiet enjoy-
ment.

Free from in-
cumbrances.

Further as-
surance

No. CLVII.

No. CLVII.
Copyright.

Assignment of a Copyright.

Obs. 1. By the 54 G. 3, c. 156, the author of any book shall have the sole liberty of printing and reprinting the same for the term of twenty-eight years, and if he survive that period, for the residue of his life. By the same statute, c. 56, the property in new and original sculptures, &c. is vested in the proprietor for fourteen years, and if

No. CLVII.
Copyright.

living at the expiration of that period, for a further term of fourteen years. By the 7 G. 3, c. 38, s. 7, the property in prints is vested in the proprietor for twenty-eight years; but see the New Copyright Act, 5 & 6 V. c. 45; Dig. p. ii. tit. COPYRIGHT.

2. By the 8 Anne, c. 19, s. 1, an assignment of a copyright must be in writing, attested by two witnesses; and it has been held, that under this Act, a parol assignment will not intitle the assignee to maintain an action on the case for pirating, *Power v. Walker*, 3 M. & S. 7; see further Dig. p. ii. tit. COPYRIGHT.

Recital of con-
tract.

Testatum.

This Indenture &c. see ante, No. LXXXV. Betn (assignor) of &c. of the one pt and (publisher) of &c. of the or. pt Whereas the sd (A.) hath written a book intituled &c. and hath contracted with the sd (P.) for the absolute sale of the copyright of the sd work for the sum of £ Now this Indre witnesseth That in conson of the sum of £ to the sd (A.) well and truly pd by the sd (P.) He the sd (A.) Doth grant assign and set over All that the sd book or work intituled &c. and the whole entire and exclusive copyright and all and singr the right title &c. of him the sd (A.) of and in and to the same To Have and to Hold the sd bk and copyright and all the prft and advantage that shall and may arise by and from the printing and vending the same unto the sd (P.) his exs ads and ass as fully and beneficially and for such time and respective times as the sd (A.) can or may assign the same In witness &c. see ante, No. XLVI.

No. CLVII.—2.

No. CLVII.—2.

Assignment of the Benefit of Covenants for the Enjoyment of Land.

Further tes-
tatum.

And this Indre furr witnesseth That for the cons hinbefe mentd and also in conson of 10s. to the sd G. S. on the like nomination and by the like diron and apptmt of the Mayor Commonalty and Citizens testified as afd He the sd G. S. Hath bargd and sold &c. and by &c. Doth bargain and sell unto (assignees) their hrs exs and ads All and evy the covt and covts which in and by the sd hinbefe in pt recited indre bearing date &c. were entered into by the sd jtly or sevly or jtly and sevly with the sd G. S. his exs ads and ass that the sd messe or tenmt

which to the sd appointees had been limited and appted should No. CLVII—2.
 during the then residue of the sd term of yrs be held and
 enjoyed by the sd G. S. his exs &c. at or under the yrly rents of
 &c. making togr the yrly rent of £ and free from and wjtht
 any advance or increase of rent whatsr except the sd annnty
 mbefe mentd and thinafr covtd to be paid to for the in-
 demnity of the sd G. S. his &c. and the sd preses of and from
 any advance or increase in rent for or in respect of either the sd
 moieties of the sd messe or preses or any pt thof except as afd
 And all the right title and int of the sd G. S. to the or. or second
 and moiety of the sd messe and preses under and by virtue of
 the same covt and covts And all the bent and advantage of
 the same To Have Hold rece and take the sd covt or covts Habendum.
 costs chas dams and the bent of the same and all and singr or.
 the preses hby assd or orwise assured or intded so to be unto
 the sd (assignees) their hrs &c. henceforth as their own effects
 absolutely for ever and with full power and authty to and for Power of at-
torney.
 the sd (assignees) their &c. to use the name or names and act as
 the atty or atties of the sd G. S. his exs ads and ass in recover-
 ing or enforcing the bent of the sd covt or covts and in obtaining
 the paymt of the sd sum or sums of money costs chas and dams
 and evy of them and giving acquittances and dischas for the
 same.

No. CLVIII.

No. CLVIII.
Debenture.

Assignment of a Debenture by way of Collateral Security.

This Indre made &c. see ante, No. LXXXV. Betn (assignor) Recital of loan.
 of &c. of the one pt and (assignee) of &c. of the or. pt Whas
 the said (assignee) hath lent and advanced to the sd (assignor)
 the sum of £ for the repaymt of which with int a certain
 messe and tent and sevl lds and hereds situate &c. were by an Conveyance
by lease and
release.
 indre of lease and rele the lease bearing date the day of
 and the rele even date with these prests and made betn
 the sd (assignor) of the first pt the sd (assignee) of the second pt
 and (trustee) of the third pt conveyed by the sd (assignor) to the
 sd (assignee) by way of security And whas the sd (assignor) As-signor pos-
sessed of a de-
benture.
 hath a debenture marked No. and signed by the commis-

No. CLVIII.
Debenture.

Testatum.

Assignment.

Proviso for making void the assignment.

Power to sell debenture.

sioners of her Maj. Transport Service for the sum of £
which is due and owing to the sd (*assignor*) for the service
and employ of the ship or vessel called burthen ton
or thereabouts of which the sd (*assignor*) is the owner *Now*
this Indre witnesseth That for the better securing the paymt of
the sd sum of £ and int unto the sd (*assignee*) his exs &c
He the sd (*assignor*) *Hath* granted bargained sold assigne
transferred and set over and by &c. *Doth* grant &c. unto the sd
(*assignee*) his exs ads and ass *All that* the sd sum of £
so now due and owing from her Maj. Government to the sd
(*assignor*) as owing to the sd ship and all bent and advantag
to be made of the same by sale or orwise *Provided always* an
the sd (*assignee*) doth hby for himself covt &c. with the sd
(*assignor*) That if he the sd (*assignor*) shall well &c. pay
unto the sd (*assignee*) his exs &c. the full sum of £ accord
ing to a proviso or covt on the behalf of the sd (*assignor*) to b
performed as in the in pt recited indre of lease and release
mentd and contd Then the assnmt hby made shall cease ar
be void to all intents and purps and the sd (*assignee*) his exs &c
shall deliver the sd debenture safe and uncanceled unto the
(*assignor*) his exs &c. fire and all inevitable accidents except
And the sd (*assignor*) doth hby for himself his exs ads and a
covt &c. with the sd (*assignee*) his exs &c. That it shall as
may be lful to and for the sd (*assignee*) his exs &c. at any tin
after the date of these prests to deliver up the sd debenture
any psn or psns who shall pay unto him or them the sd sum
£ thereupon due or to sell and dispose of the sd debentu
and all mos thereupon due after ten days' notice of such his as
their intent to sell and dispose of the same given unto or left f
the sd (*assignor*) his exs &c. at the now dwelling-house or plac
of abode of the sd (*assignor*) at as afd at the current ra
at which the like debentures shall then be sold *And lastly*
is hby decld and agrd by and betn the pties hto that all m
which shall be received by the sd (*assignee*) his exs ads or as
upon such delvy selling or disposition as afd of the sd debentu
shall be recd and taken so far as the same mos will exten
towards the paymt and discharge of such int and principal mos
shall at the time of such rect be due upon the sd in pt recite
indre of mortgage *In witness &c., see ante, No. XLVI.*

Assignment for the Payment of Debts, see post, COMPOSITION.

No. CLIX.

No. CLIX.

Debt.

Assignment of a Debt by way of Collateral Security.

Obs. As to the assignment of debts and other choses in action, see
ref. sect. 1.

*This Indre made &c. see ante, No. LXXXV. Betn (assignor)
&c. of the one pt and (assignee) of &c. of the oꝝ. pt Whas* Recital of as-
an indre bearing date on or about the day of signment to
made or expssd to be made betn A. B. of &c. therein de- assignor.
scribed of the first pt C. D. of &c. also therein described of the
cond pt and the sd (assignor) of the third pt all the book debts
sums of money then and thenceforth to become due in re-
spect of a certain newspaper printed at and called
with all presses types and printing materials and all or. the
acts used and employed in printing publishing and carrying
the sd newspaper were for the consons therein mentd duly
signed to and are now vested in the sd A. B. and the sd (as-
signor) upon certain trusts therein mentd for the better carrying
the sd newspaper and paying off certain debts and incumbs
on the same which were due to the sd (assignor) *And whas* Debt still due.
the principal sum of £ is still due and owing to the sd (as-
signor) with int for the same *And whas* the sd (assignor) hath Contract for
plied to the sd (assignee) to advance him the sum of £ loan.
which he hath consented to do upon having a grant of the sd
principal sum of £ and int due to the sd (assignor) secured
to him the sd (assignee) by bond *And whas* the sd (assignor) Bond given by
hath this day exted and given to the sd (assignee) a bond in assignor.
writing bearing even date herewith and hath thby become bd to
the sd (assignee) in the penal sum of £ with a condon there-
under-written &c. upon paymt by the sd (assignor) his hrs &c.
unto the sd (assignee) his exs &c. of the sum of £ with int
for the same after the rate of £ per cent. at the time and in
the manner in the condon of the sd bond thnafr mentd *Now* Testatum.
this Indre witnesseth That in conson of &c. to the sd (assignor)

Power of attorney.

Proviso for redemption.

Covenants.

Assignor hath done no act to incumber.

Will not receive debt.

come due for or in respect of the same or any pt th
and evy secty and secties for the same and all the rig
property possibility bent claim and demand whatsr at
equity or orwise howsr of him the sd (*assignor*) of is
of the sd principal sum and int and all and singr the
assd or intended so to be *With* full power and authty
the sd (*assignee*) his exs ads and ass to ask demand
cover and rece and to give effectual rects and dischar
same either in his or their own name or names or in
or names of the sd (*assignor*) his exs ads or ass *To l*
rece and take the sd debt or principal sum of £ a
all and singr the preses hnbeff assd or intended so to
pt thof resply unto the sd (*assignee*) his exs &c. for his
own proper use and bent *Subject* nevss to the provo
for redemption thof hnaft mentd that is to say *Provi*
and it is hby decld and agrd by and betn the sd ptie
if the sd (*assignor*) his hrs exs ads or ass do and shal
truly pay &c. Then the present assnmt and evy covt cla
matter and thing herein contd shall cease determine a
And the sd (*assignor*) for himself his hrs &c. doth hb
with the sd (*assignee*) his exs &c. That he the sd (*assi*
not done or suffered any act matter or thing whby or
whof the sd (*assignee*) his exs &c. shall or may be hi
prevented from recovering the sd debt or principal sur
hby assd or intended so to be *And* that he the sd (*as*
exs &c. shall not nor will during the continuance of t
or &c. or any pt thof on this secty witht the express

assurs in the law for the better enabling him the sd (*assignee*) his exs &c. to recover rece &c. the sd principal sum of £ and any pt thof as by the sd (*assignee*) his exs &c. or his or their counsel in the law shall be reasbly advised devised or required *In witness &c. see ante, No. XLVI.*

No. CLIX.
Debt.

No. CLIX.—2.

No. CLIX.—2.
Debt.

Another Assignment of a Debt. (Short Form.)

Know all Men by these Prests That in conson of the sum of now justly due and owing by me to (*assignee*) of &c. and better securing the payment of the same I *Have* bargained and sold &c. and by &c. do bargain sell &c. All that debt or sum of £ which is now due and owing to me from A. B. of for goods sold and delivered by me to the sd A. B. and all right title &c. of in and to the said debt or sum of £ and any pt thof *To Have* &c. the sd debt &c. from henceforth to and their proper use and bent Subject nevss to the provo &c. *And* I do hby constitute the sd (*assignee*) my true lawful atty irrevocable and give and grant to him his exs &c. power and authty in my name or the names of my exs &c. to the only proper use and behoof of the sd (*assignee*) his &c. to demand sue for levy recover rece compound acquit release and discharge the sd debt or sum of £ and evy or any pt or thof and upon rect of the same or any pt thof acquittances or proper discharges of to make and give and generally for or in my name or in the names of my exs &c. to make do perform and exte all and every such furr and or. acts matters and things touching and concerning the preses as to the sd (*assignee*) his &c. shall seem requisite and that as fully &c. *And* I do hby covt with and to the sd (*assignee*) his &c. That I have not done or suffered and that I and my exs and ads shall not will do or suffer any act whby the said (*assignee*) shall be hindered from receiving and recovering the sd debt or any pt thof and that I and my exs &c. shall and will at all times at the request of the sd (*assignee*) but at my costs and chas do all or. acts for the furr and more effectually assigning and assuring

Power of attorney.

No. CLIX.—2. the sd debt or sum of £ and evy pt thof *Provided always*
Debt. and it is hby agrd that if I the sd (*assignor*) my exs or ads shall
 well and truly pay to the sd (*assignee*) his exs ads or ass the
 sum of £ so due to him as afd within three cal mths from
 the date hrof then this present assnmt and every matter and
 thing herein contd shall cease determine and be void to all in-
 tents and purps whatsr *In witness &c. see ante, No. XLVL*

—♦—

Assignment of Copartnership Debts, see post, COPARTNERSHIP
 also TABLE OF CONTENTS.

—♦—

No. CLX.
Debt and Divi-
dends.

No. CLX.

Assignment of Debt and Dividends under a Fiat of
Bankruptcy.

Recital of debt
 due from as-
 signor to as-
 signee.

Debt due to the
 assignor from
 bankrupt.

This Indre &c. made this day of Betn (assignor)
of &c. of the one pt and (assignee) of &c. of the or. pt *Whereas*
the sd (assignor) stands justly and truly indebted unto the
(assignee) in £ and upwards on the balance of an account
for mos pd laid out and expended and for business done and
performed and for journies taken for and on the behalf of the
sd (assignor) and in the prosecution of suits at law and in equity
and in the managing various matters now in hand in his behalf
And whas the sd (assignor) is not at present able witht con-
derable inconvenience to pay the amount so as afd now due and
owing from him to the sd (assignee) and it will not be in his
power for some time to come to advance money for discharge of
the exps incident to the proceedings already commenced and
others which are now about to be instituted in his behalf by the
sd (assignee) And whas the sd (assignor) as one of the crs of
(bankrupt) of &c. a bankrupt hath proved a debt under a fiat of
banktcy agst him the sd (bankrupt) to the amount of £ on
which no divd hath as yet been made And whas in order to
secure to the sd (assignee) the paymt of the balance now due
and owing to him from the sd (assignor) with int for the same
and to afford a secty for the due paymt of any exps which may

he hraftr incurred by him in the affairs of the sd (*assignor*) as well as of all bills of costs and chas that may hraftr be due to him on the acct of the sd (*assignor*) he the sd (*assignor*) hath proposed and agrd to assign and make over to him the sd (*assignee*) the sd debt afd proved by him agst the este of the sd (*bankrupt*) and all divids which may be due or become due on acct thof upon the trusts and in manner hnafr mentd *Now this Indre witnesseth* That in conson of the preses he the sd (*assignor*) hath granted bargained sold &c. and by &c. doth grant &c. unto the sd (*assignee*) his exs and ads *all that* the sd debt due and owing to the sd (*assignor*) from the sd (*bankrupt*) and proved by him under the fiat of bkptey agst the sd (*bankrupt*) as hnbeft is mentd and also all and evy divd and sum and sums of money which shall or may be decld or become due and paye on acct thof respby And all the este right and int of him the sd (*assignor*) of in and to the same and evy thof And all powers and remedies for the recovering and en- forcing paymt of the same *To Have* rece and take the sd debt sum divd or divds hnbeft expssd to be hby assd with all bent and advantage thof and all powers and remedies for recovering the same unto the sd (*assignee*) his &c. as and for his and their mos *Upon the Trusts* nevss and for the purps hnafr expssd and decld of and concerning the same *And* for the better enabling him the sd (*assignee*) his exs ads and ass to rece the sd sum and sums of money hnbeft expssd to be hby assd to the sd (*assignee*) He the sd (*assignor*) doth make &c. (see *Assignment of Debt*) the sd (*assignee*) his exs &c. the true &c. atty &c. of him the sd (*assignor*) to ask demand &c. the sd debt or sum of £ and all divds &c. And on rect thof to give rects and acquittances or discharges for the same as the case shall require and to bring commence and prosecute any action suit or or. proceeding whatsr for recovering and compelling paymt thof And also to adjust settle compound and compromise all accts and reckonings mat- ters and things whatsr relating to the sd debt divds and preses any of them And for all or any of the purps afd to use the name of the sd (*assignor*) and generally to do exte and perform any or. act deed matter or thing whatsr relating to the preses as fully to all intents as he the sd (*assignor*) could do if personally present And whatsr the sd (*assignee*) shall lfully do in or about

No. CLX.
*Debt and Divi-
dends.*

Agreement to
assign debt and
dividends.

Testatum.

Habendum.

Power of at-
torney.

Declaration of
trusts.

No. CLIX.—2. the sd debt or sum of £ and evy p^r
 — *Debt.* — and it is hby agrd that if I the sd (*as*
 well and truly pay to the sd (*assign*
 sum of £ so due to him as
 the date hrof then this preser
 thing herein contd shall cea^r
 tents and purps whatsr *I*

Assignment of Copa

No. CLIX.
Debt and Divi-
dends.

Assi

Recital of debt
 due from as-
 signor to as-
 signee.

Thi the sd debt or sum of
 to him the sd (*assignee*) f
 int for the same from the d
 next place do and shall in lik
 of &c himself and themselves the ful
 the chas and exps which he the sd (*as*
 (*as* be put unto or incur or which may b
 f him for any business to be done on acc
 and when and as soon as all such sums
 been fully pd off and discharged *Then* up
 the sd (*assignee*) his exs &c. shall and wil
 (*assignor*) his exs &c. the residue of the r
 be recd by him by virtue of these prests.

In witness &c. see ante, No. XLVI.

No. CLXI.
Power.

No. CLXI.

Assignment of Dower.

Obs. 1. A woman, although legally entitled
 mon law, cannot enter upon her part until it
 signed to her by the sheriff, under the queen's
 the tenant of the freehold. Co. Lit. 34 b.

2. As to the stamp, see Pref. sect. 4.

No. CLX.
Debt and Divi-
dends.

the preses the said (*assignor*) doth hby covt and prom
and to the sd (*assignee*) his exs &c. to allow ratify and
And it is hby decld and agrd by and betn the sd pties
the assnment hby made of the sd debt sum and sums o
divd and divds and the power hinfbre given to the
signee) his exs ads and ass is so made and given to l
them And that he and they shall and will rece and sta
sessed of all and evy sum and sums of money which
come paye on acct of the sd debt or sum or the divd
thof Upon the trusts and for the purps hnafttr expssd ar
of and concerning the same that is to say *Upon Trust*
the sd (*assignor*) his exs ads and ass do and shall thereon
and reimburse himself or themselves all costs chas a
whatsr as he or they shall or may from time to time be
or sustain in or about the exon of the trusts hby reposec
and them and also the sd debt or sum of £ so as a
due and owing to him the sd (*assignee*) from the sd (a
Togr with lful int for the same from the day of the date
And in the next place do and shall in like manner ret
reimburse himself and themselves the full amount of a
paymts chas and exps which he the sd (*assignee*) may fr
to time be put unto or incur or which may become due an
to him for any business to be done on acct of the sd (a
And when and as soon as all such sums of money sh
been fully pd off and discharged *Then* upon this furr tr
the sd (*assignee*) his exs &c. shall and will pay over to
(*assignor*) his exs &c. the residue of the mos which shal
be recd by him by virtue of these prests.

In witness &c. see ante, No. XLVI.

No. CLXI.
Dower.

No. CLXI.

Assignment of Dower.

Obs. 1. A woman, although legally entitled to her dower
mon law, cannot enter upon her part until it has been regu
signed to her by the sheriff, under the queen's writ, or by the
the tenant of the freehold, Co. Lit. 34 b.

Stamp.

2. As to the stamp, see Pref. sect. 4.

This Indenture &c. see *ante*, No. LXXXV. Betn (*heir*) of &c. heir at law of A. B. decd of the one pt and (*dowress*) of &c. widow and relict of the sd A. B. of the or. pt *Whas* the sd A. B. was at the time of his dece seised of an este of inhance in fee simple in posson of and in divers lds and tents situate &c. which upon his dece descended unto the sd (*H.*) subject to the dower of the sd (*D.*) *Now this Indre witnesseth* &c. That upon the request of the sd (*D.*) He the sd (*H.*) *Hath* assigned and by *he*. *Doth* assign unto her the sd (*D.*) one third pt of the sd lds and tents to wit All that messe &c. *To Have and to Hold* unto the sd (*D.*) for and during the natural life of the sd (*D.*) severly by metes and bounds as for and in the name of dower and in full satisfaction of all claim which the sd (*D.*) hath or ought to have of or in the sd lds and tents of which the sd A. B. was seised in his lifetime And the sd (*D.*) doth hby accept the said messe or tent &c. so assigned as and for her dower and in full satisfaction of the same *In witness* &c. see *ante*, No. XLVI.

No. CLXI.
Dower.

Recital of seisin
in fee simple.

No. CLXII.

No. CLXII.
Executorship.

*Assignment of an Executorship and Indemnity of the Executor
by a Mortgage.*

Obs. 1 An executorship, being an office of trust, is not assignable see Pref. sect. 2) otherwise than in the qualified manner of the following precedent, which has been taken with some variations from *Wood's Conveyancing*.

2. As to the stamp, see Pref. sect. 4.

This Indre made &c. see *ante*, No. LXXXV. Betn (*heir*) son and hr and also residuary legatee under the will of A. B. late of &c. decd of the one pt and (*executor*) of &c. executor of the last will and testmt of the sd A. B. *Whas* the said A. B. did by his last will and testament in writing bearing date &c. devise all his messes lds tents and hereds and did bequeath all his personal estate unto (*executor*) and E. F. (since decd) their hrs and assigns *In Trust* by sale or mtge or orwise to raise and pay his debts funeral exps and legacies and made the sd (*H.*) his residuary legatee *And whas* the sd (*E.*) hath by and with the privity and

Recital.

No. CLXII. <i>Executorship.</i>	consent of the sd (<i>H.</i>) pd and discharged the funeral e
Payment of debts and le- gacies.	divers debts and legacies of the sd A. B. which are ment
Agreement to assign.	schedule hereunto annexed and hath delivered all disc
	acquittances which were made and given to him the sd
	the sevl sums of money so pd as the sd (<i>H.</i>) doth hby
	<i>And whas</i> it hath been agrd betn the sd (<i>H.</i>) and the
	that the sd (<i>H.</i>) shall from henceforth take upon him th
	of all such legacies and sums of money as yet remain
	force of the sd last will and that the sd (<i>E.</i>) shall for t
	pose assign unto the sd (<i>H.</i>) all such goods chattels
	things as the sd (<i>E.</i>) hath or is intitled to as executo
	same will in such manner as is hnafr expssd <i>And the</i>
	hath agrd to make such lease and demise to the sd (.
	hnafr contd to the intent thby to indemnify him the
Testatun.	<i>Now this Indre witnesseth</i> That in conson of the prese
	sd (<i>E.</i>) <i>Hath</i> granted &c. unto the sd (<i>H.</i>) <i>All thos</i>
	letters of administration and probate of the will of the
	decd and all the goods chattels debts secties for debts
	things which the sd (<i>E.</i>) hath or is intitled unto as exe
	the last will and testmt of the sd A. B. decd the rect o
	sd leases &c. the sd (<i>H.</i>) doth hby acknge <i>To Have H</i>
	and take the same and evy of them and all the right
	int of him the sd (<i>E.</i>) therein and thereunto and all a
	or. the preses hby assd unto the sd (<i>H.</i>) his exs &c. in
	ample and beneficial a manner as he the sd (<i>E.</i>) mig
Power of at- torney.	held recd and taken the same by virtue of the sd will
	sd (<i>E.</i>) doth hby give unto the sd (<i>H.</i>) his exs &c. ful
	and authy in the name or names of the sd (<i>E.</i>) his exs
	at the costs and chas of the sd (<i>H.</i>) his exs &c. and to
	his and their own use and bent to demand rece sue for
	cover all debts and all or. the sums of money due and c
	the este of the sd A. B. decd and all and evy the bond
	secties terms ints and estes concerning or relating to t
	which do or shall belong unto the sd (<i>E.</i>) as executor o
No act to in- cumber.	will of the sd A. B. decd <i>And the said (E.) for himself t</i>
	covt &c. with the sd (<i>H.</i>) his exs &c. that he the sd (<i>E.</i>)
	hath not at any time heretofore made done or suffered ar
	not nor will at any time or times hraftr make do or suffer
	matter or thing whby any of the debts or sums now d

ing to the sd A. B. decd can or may be reld dischgd or orwise
 and also that he shall and will at all times hrafr at the rease
 quest costs and chas of the sd (H.) do any furr acts deeds
 atters and things for the furr or better empowering and en-
 ling the sd (H.) his exs &c. in the name or names of the sd
 E.) his exs &c. to demand rece and recover all debts and sums
 f money due and owing to the este of the sd A. B. decd And
 e sd (H.) in conson of the preses doth hby acknge and declare
 at all the sd (E.) hath done or acted in the exon of the last
 ill and testmt of the sd A. B. decd and as mentd in the sche-
 cle hereunto annexed hath been with the privity consent and
 xprobation of the sd (H.) And the sd (H.) doth hby for him-
 lf his exs &c. covt &c. with the sd (E.) his exs &c. that he the
 l (H.) his exs &c. shall and will from time to time and at &c.
 ve harmless and keep indemnified the sd (E.) his exs ads and
 s and his and their lds and tents goods and chattels of and
 om all costs &c. which he or they shall or may sustain &c. by
 ason of any action &c. and also for or by reason of any deft
 r failure of or in the performance of the sd last will and testmt
 f the said A. B. decd And this Indre furr witnesseth That in
 ur pursuance of &c. and in conson of &c. He &c. (*demise to
 recutor, see Mortgage by Demise*) Subject nevss to the proviso
 : condon hnafr mentd that is to say *Provided always* and it
 hby deld and agrd by and betn the sd pties hereto that if the
 l (H.) shall and do well and truly perform all and evy the
 vts and agrts herein contd on his and their pt to be done and
 rformed according to the true intent and meaning of these
 rests Then the sd term of yrs of and in the sd messes or
 nts hby demised shall at the end of years next ensuing
 etermine and be utterly void to all intents and purps anything
 a these prests in any ways to the contrary notwthstg *Pro-
 vided also* That in the meantime and until the sd (H.) shall
 make deft in the performance of the covts and agrts herein
 contd by means or occasion whof the sd (E.) his exs ads or ass
 r any of them shall sustain and be put to some trouble suit
 damage or expence it shall and may be lful for the sd (H.) his
 exs ads and ass peaceably and quietly to have hold and
 enjoy the sd messes or tents &c. hby demised or orwise assured
 r intended so to be &c. and to rece and take the rents &c.

No. CLXII.
Executorship.

Further as-
 surance.

Indemnity from
 the heir.

Further testa-
 tum.
 Demise to exe-
 cutor.

Proviso for
 ceaser of term.

Quiet enjoy-
 ment until de-
 fault.

No. CLXII. Executorship. witht any let hindrance &c. of or by the sd (*E.*) his
And the sd (*H.*) for himself &c. (*Covts from the heir*
&c. see RELEASE.)



No. CLXIII.
Furniture.

No. CLXIII.

*Assignment of Household Furniture and Verbal Agree
a Lease.*

<p>Recital of tenancy.</p> <p>Verbal agree- ment to grant lease.</p> <p>Contract for purchase.</p>	<p><i>This Indre</i> made &c. see <i>ante</i>, No. LXXXV. Betn (a of &c. of the one pt and (<i>assignee</i>) of &c. of the or. pt the sd (<i>assignor</i>) is in posson of a messe or tent situate as tenant to A. B. of &c. and C. D. of &c. under a yrly £ paye quarterly <i>And whas</i> the sd A. B. and C. verbally agrd to grant a lease of the sd messe or tent fo from the day of determinable in the first 7 at the option of the sd (<i>assignor</i>) <i>And whas</i> the sd (<i>assign</i> contracted with the sd (<i>assignor</i>) for the purchase of th hold furniture now being in or upon the sd messe or ter in the schedule or particular thof hereunder written at c price of £ <i>Now this Indre witnesseth</i> That for and ir of £ to the sd (<i>assignor</i>) in &c. by the sd (<i>assignee</i>) pd the rect &c. He the sd (<i>assignor</i>) Hath bargained : assigned and by &c. <i>doth</i> bargain &c. unto the sd (<i>assi</i> exs and ads <i>All</i> and singr the household furniture an mentd and specified in the sd schedule or particular th under written and also all the este right title int proper and demand whatsr of him the sd (<i>assignor</i>) into or ou sd messe or tent and preses with the apts And the and advantage to arise and accrue from the sd promise made or entered into by the sd A. B. and C. D. for su thof as afd or for any or. lease <i>To Have Hold</i> rece t enjoy the preses hby assd or intended so to be unto the <i>signee</i>) his exs ads and ass for his and their use absolut <i>witness</i> &c. see <i>ante</i>, No. XLVI.</p>
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No. CLXIV.

No. CLXIV.
Goods.

Assignment by a Husband of Household Furniture, Books, Plate, Bills of Exchange, &c., to Trustees to sell for the Payment of Debts, and to stand possessed of Surplus for the separate Use of the Wife.

Obs. A settlement after marriage in favour of a wife and children, by a person not indebted at the time, and not being a trader, is, under 1 Jac. 1, c. 15, s. 5, good against subsequent creditors, *Lilly v. Taborn*, 3 P. Wms. 298; *Stephens v. Olive*, 2 B. C. C. 90; *Kidney v. Cousmaker*, 12 Ves. 155; and although a settlement after marriage is fraudulent against such persons as were creditors at the time the settlement was made, yet it is otherwise if such settlement contains proviso for debts, *George v. Millbank*, 9 Ves. 144.

This Indre made &c. see ante, No. LXXXV. Betn (husband) of M. and M. his wife of the first pt and (trustees) trustees named for the purps hnafttr mentd of the second pt *Whas the sd (H.) possessed of or intitld to divers books plate and household furniture and is also possessed of or intitld to the bills of exchange parlarly mentd in the schedule hereunder written* *And whas the sd (H.) is desirous of making a provision as well for the payment of the debts now due and owing by him as for the M. his wife in manner hnafttr mentd* *And hath therefore proposed and agrd to assign and make over unto the sd (T.) and the survivor of them and the exs &c. of such survivor all the sd plate household furniture bills of exchange and or. parlars upon or for the intents and purps hnafttr ment* *And whas the sd (H.) hath previously to the date and exon of these prests delivered unto the sd (T.) the sd books plate household furniture bills of exchange and or. parlars* *Now this Indre witnesseth* *That in pursuance of the sd agrt and in conson of 5s. to the sd (H.) by the sd (T.) in hand pd* *He the sd (H.) Hath bargained sold assigned &c. and by &c. Doth bargain &c. unto the sd (T.) their exs &c. All and singular the sd bks plate and household furniture of or to which he was possessed and intitld* *And also the sd bills of exchange parlarly mentd in the sd schedule hereunder written* *And all the right &c. of him the sd (H.) of into and out of the same preses and evy of them and*

No. CLXIV. *Goods.* evy pt thof *To Have hold* take and rece all and si
 preses hnbefe assd or intended so to be unto the sd (*T.*)
 survor of them &c. as and for his and their own go
 chattels absolutely. But nevss upon to and for the
 intents and purps hnaft expssd and decl'd of and con
 the same that is to say *Upon Trust* that they the sd (*T.*)
 the survor &c. do forthwith sell and convert into money
 bks plate furniture and or. parlars expssd to be hby a
 shall and will recover and rece the mos due and arisin
 or paye by virtue of the sd bills of exchange And up
 furr trust that they shall and do out of the mos recd
 arise by such sale and conversion after deducting the co
 and exps of recovering and receiving the said mos p
 satisfy all such debts and sums of money as are now d
 owing by the sd (*H.*) unto any psn or psns howsr ei
 specialty or simple contract togr with all int due thereo
 shall and do stand possessed of or interested in the surplu
 mos to be recd from or on acct of the sd bills of exch
 to arise by such sale and conversion as afd *In Trust*
 sole and separate use of the sd M. wife of the sd (*H.*)
 pendently of the sd (*H.*) and not to be subject to his de
 engagements to pay apply and dispose of such surplus
 and for such intents and purps as if the sd M. were a f
 and unmarried And the sd (*H.*) for himself his hrs
 ads doth covt &c. with the sd (*T.*) and the survor &c.
 shall and will from time to time and at all times hrafte
 do and exte all such furr and or. lful and rease act
 matters and things as shall be necessary for the furr assuri
 assigning the preses and for the more effectually enabl
 sd (*T.*) and the survor of them &c. to recover and rece t
 due and paye upon or to arise by virtue of the sd bills
 change as by the sd (*trustees*) &c. or his or their counsel
 law shall be advised or required. *In witness &c. se*
 No. XLVI.

Covenant for
 further assu-
 rance.



No. CLXV.

No. CLXV.
Good-will.

Assignment of Good-will of a Business.

1. The good-will of a trade is assignable, *Bunn v. Guy*, 4 O; 1 P. Wms. 196. But the sale of a trade does not prevent him from setting up a similar trade, unless there be an express covenant to restrain him from so doing, *Shackle v. Baker*, 14 Ves. 100. A bond or promise to restrain oneself from trading in a particular place, if made upon a reasonable consideration, is good; but not if not made for a reasonable consideration; or if made to the detriment of trade altogether, *Mitchell v. Reynolds*, 1 Wms. 181. An agreement by an attorney to relinquish his business, and recommend his clients to another, and not to practise himself within certain limits is valid in law; but it seems doubtful whether a court of equity considering the business of an attorney to arise from confidence in his skill and integrity, would decree specific performance of the contract for the sale of it, *Bozon v. Farlow*, 1 Mer. 159.

It appears that an *ad valorem* stamp is not necessary where the stamp duty is merely for the good-will of a trade, and for the privilege of carrying it on for a certain number of years in a particular place, that not being considered a sale of "substantive property," *Warrington v. Stark*, 1 N. P. C. 162; *Belcher v. Sikes*, 1 C. 234.

Indenture made &c. see ante, No. LXXXV. Betn. (assignor) of &c. of the one pt and (assignee) of &c. of the or. pt
he sd (assignor) hath for many yrs carried on the trade
business of in the house in which he now dwells
he established a connexion in the sd trade And whas
(assignor) hath agred with the sd (assignee) for the sale
in quishment to him the sd (assignee) of the sd trade or
s and also of the lease of the messe or tent where the sd
s is carried on at or for the price of £ to be pd
tr mentd Now this Indre witnesseth That in conson of
&c. to the sd (assignor) in hand &c. pd by the sd (as-
&c. at &c. the rect &c. He the sd (assignor) Hath granted
&c. and by these prests as far as in him lies Doth grant
to the sd (assignee) his exs &c. All and singr the good-
neficial int and advantage of the connexions and custom
he the sd (assignor) now hath in the sd trade or business
ave Hold rece and take the sd good-will bent prft and
tage to be made and obtained by and from the sd trade

Recital of carrying on trade.

Contract for sale.

No. CLXV.
Good-will. or business And all the este &c. and all and singr or. tl
preses hby assd or orwise assurd or intended so to be with the
appts unto the sd (*assignee*) his &c. And the sd (*assignor*) fo
himself &c. his hrs &c. doth hby covt &c. in manner follow
Covenants. That is to say That he the sd (*assignor*) shall not nor will at any
Not to carry on trade. time or times hrafrt directly or indirectly by himself or in part-
nership with any psn or psns whomsr carry on the sd (a) trade
or business of within miles of nor
shall nor will at any time hrafrt do or cause to be done any act
matter or thing whby or by reason or by means whof the sd
(*assignee*) shall or may be injured or damnified in the sd trade
or business And furr that the sd (*assignor*) shall and will
during the space of mths next hrafrt conduct and
superintend the sd trade &c. at the risk and for the sole be-
of the sd (*assignee*) and use his best endeavours to promote the
trade of the sd (*assignee*) to the utmost of his power and also shd
and will give his personal attendance in the shop (or counting
house) as often as occasion may require during the sd period
Further testa- And this Indre further witnesseth That in conson of the pres
tum. &c. (see *Assignment of Lease*, No. CLXXI.) And it is hby
Assignment of lease. decld and and agrd by and betn the sd pties herto that he the
Assignor to re- (*assignor*) shall continue to reside in the sd messe or tent
side on the asssd or orwise asssd or intended so to be for the space of
premises for calr mnths to be computed from the date hrof witht paying
six months. or taxes for the same unless the sd (*assignee*) shd by writ
under his hand give the sd (*assignor*) weeks' notice
quit the sd messe or tent And furr That the stock in trade
Stock in trade to be valued. and the fixtures on the sd preses shall within the space of
calr month from the date hereof be valued and appraised by
two indifferent psns for that purpose to be chosen the one by
the sd (*assignor*) and the other by the sd (*assignee*) and in case
they cannot agree by a third psn to be chosen by the two arbi-
trators And that he the sd (*assignee*) shall from and immly after
such valuation (b) pay the amount thof unto the sd (*assignor*) his
exs &c. In witness &c. see ante, No. XLVI.

(a) See *supra*, Obs. 1.

(b) Or, "give unto the sd (*assignor*) his exs ads or ass a promissory note in writing under his hand for payment within calr mnths to be computed from the date hereof of such sums as the sd stock in trade and fixtures shall be valued at as afd."

No. CLXVII.

No. CLXVII.
Good-will.

Assignment of the Moiety of a Boarding School (by Indorsement on the Articles of Copartnership).

Obs. As to the stamp upon the assignment of a good-will, see *last precedent*.

To all to whom these Presents shall come The within-named assignor) sendeth greeting *Whas* the sd (assignor) by virtue of the power given to her in and by the within-written articles of copartnership hath contracted and agreed with (assignee) of &c. for the absolute sale to her of her share and int in the boarding-school now carried on by the sd (assignor) in copartnership with the within-named I. H. under and subject to the condons limitations and agrts as are in and by the within-written articles expssd and *And Now Know ye* That in conson of the sum of £ to the sd (assignor) well and truly pd the rect &c. she the sd (assignor) Hath bargd sold and assigned and by &c. doth bargain sell and assign unto the sd (assignee) *All that* moiety or one half pt of her the sd (assignor) of and in the sd boarding-school and of and in the sd preses where the same is carried on and the furniture fixtures books and other materials relating to the school and also of and in the within-written articles of copartnership And all the este right title int property future emolument and advantage claim and demand whatsr of her the sd (assignor) of in or out of the same preses *To Have and to Hold* the sd moiety or one half pt of and in the sd boarding-school and all and singr or. the preses hby assd or intended so to be had all future emolument and advantage to arise from the same in as full ample and beneficial a manner as she the sd (assignor) might have enjoyed the same if these prests had not been made with any let suit &c. And that free &c. (see *Assignment of Annuity by Indorsement.*) *In witness* &c. see *ante*, No. XLVI.

No. CLXVIII.

No. CLXVIII.
Judgment.

Assignment of a Judgment recovered by a Verdict.

Obs. 1. As to judgments and other choses in action, see ASSIGNMENTS, Pref. sect. 1.

No. CLXVIII. 2. A judgment debt has been held not to be property within the meaning of the 55 G. 3, and therefore an assignment of such debt does not require an *ad valorem* stamp, but must have the ordinary deed stamp, *Warren v. Howe*, 3 D. & R. 494.

Stamp.

To all to whom these Prests shall come I (assignor) send greeting Whas I (assignor) as of _____ term last past covered a judgment in her Maj. Court of _____ at Westminster agst A. B. &c. for the sum of £ _____ as by the record of judgment will more fully appear Now Know ye That I (assignor) for divers good causes and consons me hereby moving Have bargd sold and assd &c. and by &c. Do I &c. unto (assignee) of &c. his exs &c. as well the sd judgment the sd sum of £ _____ afd as all bent profit sum and s money and advantage whatsr that now can shall or may be obtained by reason or means of the same or of any thereupon now had or to be had sued out extd or obtain all the este &c. which I the sd (assignor) have or ought to or claim in &c. And furr I the sd (assignor) do by these make &c. the sd (assignee) &c. my atty &c. for me and name to sue and prosecute the sd exon upon the sd judgment and upon composition made concerning the preses to satisfaction or to make or give any or. release or discharge the same and to make and do all such or. acts and things as shall be requisite in and about the preses &c. And I (assignor) for myself do hby covt &c. in manner and form that is to say That I the sd (assignor) have never made or any rele or or. dischge of the sd judgment or of any exon hath been or shall thereupon be sued or exted neither w shall I the sd (assignor) my exs or ads at any time hraft or do any act or or. thing whatsr whby the sd judgment exon which hath been or shall at any time hraft be the sued or exted by the sd (assignee) and his ass shall be manner defeated hindered disabled debarred or exting witht the consent of the sd (assignee) his exs ads or ass t first had in writing nor revoke invalidate or avoid any po authty hnbefe by me given to the sd (assignee) witht suc sent as afd And furr that I the sd (assignor) my exs ar shall at all times hraft at the request costs and chas of (assignee) &c. maintain justify allow and confirm all suc

Power of attorney.

Covenants.

Judgment not satisfied.

Assignor will not release.

tions suits processes exons and proceedings whatsr as have
 en or shall hrafr be brought sued forth or prosecuted agst
 sd A. B. his hrs &c. his their or any of their lds tents goods
 chattels upon or by reason of the sd judgment *In witness*
. see ante, No. XLVI.

No. CLXVIII.
Judgment.

No. CLXIX.

Assignment of a satisfied Judgment.

No. CLXIX.
Judgment
satisfied.

Obs. 1. As judgments after they are docketed (but see now as to
 sketing judgments, Dig. p. ii. tit. JUDGMENTS,) and recognizances
 er they are inrolled, become liens on the land, and carry the legal
 ate, a purchaser, without notice of any incumbrance, may, by getting
 assignment of those securities to a trustee for himself, protect the
 ds purchased from any mesne incumbrances, Ellis' Law of Dr. &
 : 399. And this doctrine extends to a mortgagee, who is considered
 a purchaser *pro tanto*, 1 Ch. Ca. 149.

2. As to the stamp, see Pref. sect. 4.

Stamp.

This Indenture &c. see *ante*, No. LXXXV. Betn (*assignor*)
 &c. of the first pt (*vendtor*) of &c. son and hr of A. B. decd of
 e second pt (*purchaser*) of &c. of the third pt and (*trustee*) a
 stee named &c. of the fourth pt *Whas* the sd (*assignor*) did
 or as of Trinity Term in the yr obtain a judgment against
 e sd A. B. decd in her Maj. Ct of for the sum of £
 bt and costs of suit and the sd judgmt was so obtained as pt
 a secty &c. *And whas* the sd sum of £ has since been fully
 d and satisfied *And whas* the sd (*P.*) hath contracted with the
 l (*V.*) for the absolute purchase to him of all the lds tents and
 credits situate &c. for the sum of £ and by indres of lease
 nd rele the lease bearing date the day before the date of the
 ele and the rele bearing even date herewith and made or
 xposed to be made betn the sd (*V.*) of the one pt and sd (*P.*) of
 he or. pt the sd lds &c. were conveyed unto the sd (*P.*) his hrs
 nd ass for ever And it was agrd at the time of the purchase
 that the sd judgment shd be assd to the sd (*T.*) for the purps
 hnafr mentd. *Now this Indenture witnesseth* That in conson^t
 of 5s. to the sd (*T.*) in hand pd He the sd (*assignor*) at the
 request and by the direction and apptmt of the sd (*V.*) and at
 the nomination of the sd (*P.*) testified by their severally being

Recital of judg-
 ment.

Of satisfaction.

Contract for
 purchase of
 lands.

Testatum.

No. CLXIX.
Judgment ratified.

Habendum.

In trust for purchaser.

To protect against mesne incumbrances.

pties to and signing this deed *Hath* bargained sold assigned and set over and by &c. *Doth* bargain &c. and the for the conson in the sd indre of rele mentd *Hath* bargd sold assigned ratified and confirmed and by &c. grant &c. unto the sd (*T.*) his exs &c. *All that* the hnbe recited judgmt and all and evy sum &c. and all bent s vantage to be derived therefrom And all the este &c. *To and to Hold* the sd in pt recited judgmt and all and si the preses hby granted &c. unto the sd (*T.*) his exs &c. for the sd (*P.*) his hrs and ass to be assd and dispo from time to time as he or they shall direct and appt the mean time in trust and to the intent that the same ju may be kept on foot to attend and wait upon the inhanc sd lds tents and hereds in order to defend and protect tl from and agst all subsequent judgmts statutes and other incumbrances *And* the sd (*A.*) *Doth* hby for hims covt &c. with the sd (*T.*) his &c. that the sd judgm not been vacated discharged or defeated in any manne *And* that the sd lds tents and hereds shall not be exte or upon the same judgmt orwise than for conformity and of any such extent the same as to the sd lds &c. so pu shall be in trust for and for the bent of the sd (*P.*) *In* &c. see *ante*, No. XLVI.

No. CLXX.
Land Tax.

No. CLXX.

Assignment of Land Tax.

Duty and liability of commissioners for the redemption of the land tax.

Obs. By the 42 G. 3, c. 116, s. 154, every person desirous chasing the land tax charged on any lands, shall produce to t missioners of land tax a schedule in writing of the land tax p to be purchased, and the commissioners, having ascertained the of the land tax to be redeemed, shall give a certificate there purchaser, who shall produce the same to the commissioner this Act, whereupon the commissioners shall give public notice offer made; and if within sixteen days from the time of such no higher offer exceeding 1l. per cent. is made, they are aut to accept such offer. Held under this provision that the dut commissioners is merely ministerial, and there is no remedy

them in equity, nor otherwise, except by *mandamus* in the Q. B. as to which however there is a doubt, *Williams v. Commissioners of Taxes*, 3 Mer. 472. It seems also that although public notice must be given of the first offer, yet there is nothing in the Act which prevents any subsequent biddings from being private, *ib.*

No. CLXX.
Land Tax.

This Indre made &c. see *ante*, No. LXXXV. Betn A. (assignor) of &c. of the one pt and (assignee) of &c. *Whas* M. A. Esqr being seised or possd of &c. in the county of &c. otherwise well intituled to one-sixteenth pt of one seventy-second pt or share in the New River brt from &c. to &c. under or by virtue of the will or apptmt of M. his wife decd bearing date did &c. or about &c. day of &c. contract and agree with the commrs &c. mentd for the redemption of the ld tax charged upon the &c. one-sixteenth &c. pt or share And by a deed poll or instrument in writing under the hand and seals of (commrs) two of the commrs of the land tax for the city of &c. bearing date &c. the sd (commrs) certified that they had contracted and agrd with the sd M. A. for the redemption by him of £ &c. land tax being the land tax chagd upon the sd &c. pt or share And the reason was thby decld to be £ &c. capital stock in the Three pr cent. Consold and Reducd Bk Annuities or one of them to be transferred to the commrs for reduction of the national debt at the Bk of Engl. And *whas* in pursuance of the direction for that purpe contd in the Act of Parliament of &c. intituled (*here set out the title*) a certificate of the receipt or transfer of the sd sum of £ &c. Three pr cent. &c. under the hand of (cashier) one of the cashiers of the Bk &c. is indorsed upon the recited deed poll and by the sd certificate the sd sum of £ &c. Three pr cent. &c. was ackngd to have been transferred on the &c. day of &c. And *whas* the sd M. A. duly made his last will and testmt in writing bearg date on or about &c. and did thby give and bequeath unto the sd (assignor) her exs ads and ass All that the sd share &c. and all his interest thin and he appted the sd (assignor) executrix of his will who shortly after his dece and on or about the &c. day of &c. duly proved his will in the Prerogative Court of the Archbishop of Canterbury And *whas* the sd (assignor) hath agrd with the sd (assignee) for the absolute sale to him of the sd yrly sum of £ &c. and all her bent right and interest in to and upon the sd share under and by virtue of the sd

Recital of possession of a share in the New River.

Contract for redemption of land tax thereon.

Consideration for the redemption.

Will of M. A. appointing assignor executrix.

Probate of M. A.'s will.

Contract with assignee for the sale to him of the land tax.

No. CLXX. <u>Land Tax.</u>	contract hnbefe mentd at or for the price or sum of £
Testatum.	<i>this Indre witnesseth</i> That in pursuance and performance of the sd agrt and in conson of the sd sum of £ of lful &c. the sd (<i>assignor</i>) paid by the sd (<i>assignee</i>) immly before the of these prests the receipt &c. (see <i>ante</i> , No. LXXXV.) the sd (<i>assignor</i>) Hath bargained sold &c. and Doth bargai (see <i>ante</i> , No. CXLV.) unto the sd (<i>assignee</i>) his exs ad ass <i>All that</i> the sd yrly sum of £ being the ld tax &c. and so as afd redeemed by the sd M. A. and all arrea future paymts thof and all the lien right title int claim a mand whatsr of her the sd (<i>assignor</i>) in to and upon the sd and preses under &c. the sd recited contract togr with recited deed poll and the full bent and advantage of the
Habendum.	<i>To Have and to Hold</i> rece and take the sd yrly sum of d deed poll and all or. the preses hby assd or intended so and the full bent and advantage of the same unto the (<i>signee</i>) his exs ads and ass from henceforth absolutely nevss to the same right and power of redemption restr and condons as the same were subject and liable to be
Covenants for title. Good right to assign.	exon of these prests <i>And</i> the the sd (<i>assignor</i>) doth for her hrs exs and ads covt and declare to and with the sd (<i>nee</i>) his exs ads and ass that she the sd (<i>assignor</i>) hath i self good right full power and lful and absolute authty to the sd yrly sum or ld tax of £ and or. the preses hb or intended so to be unto the sd (<i>assignee</i>) his exs &c. in n
Quiet enjoy- ment.	afd and accg to the true intent and meaning of these prests <i>also</i> that he the sd (<i>assignee</i>) his exs &c. shall or lfully ma time to time and at all times have rece take and enjoy th sum &c. and or. the preses hby assd or intended so to b the full bent and advantage thof witht any let suit t denial or interruption of from or by her the sd (<i>assignor</i>) h ads or any or. psn or psns lfully claiming or to claim by
Free from in- cumbances.	through under or in trust for her or the sd M. A. And the and clear of and from all former and or. assts chas and inc made done or committed by her the sd (<i>assignor</i>) or by t
Further assu- rance.	M. A. <i>And furr (covenant for further assurance, see ante CXLV.)</i>

ASSIGNMENTS OF LEASES.

Assignment to be in Writing.

By Indenture or Deed Poll.

Assignee bound by the Covenants of the Lease.

4. Licence to assign.

5. Consideration.

6. Covenants qualified in Assignments.

7. Ad valorem Stamp necessary.

SECT. 1. By the 29 Car. 2, c. 3, no lease, estate or interest, either freehold or for term of years, or any uncertain interest in land, may be assigned, unless by deed or note in writing, signed by the lessor or his agent legally authorized.

Assignment to be in writing.

2. An assignment of a lease may be by indenture or deed poll; but where it is by indorsement, and no covenants are entered into by the assignor, a deed poll appears to be the proper form.

By indenture or deed poll.

3. An assignee is bound, under the words "subject to the rents and covenants on the lessee's part to be paid &c." to indemnify the assignor against the rent and covenants, although he be not required to do by the agreement for the sale, *Pember v. Muthers*, 1 B. C.

Assignee bound by the covenants of the lease.

42. As a lessee will, notwithstanding his assignment to another, continue liable under his covenant, to pay the rent during the term, a provision is particularly necessary. If the assignor be himself assignee, it is necessary for this condition to be revived on his part, in order that he may be protected against his own covenant. Where it is of importance to save the expence of a counterpart, a bill of covenant, or a bond, may be taken from the assignee for performance of the covenants in the lease, or a proviso similar to that in *Doe v. Bateman*, 2 B.

A. 168. (As to the liabilities of lessee and assignee, see further, *SECT. 16*; Pref. sect. 16.)

5. If the lessee is prevented from assigning without the licence of the lessor, it is incumbent on him as vendor, and not on the purchaser, to procure the licence, *Lloyd v. Crisp*, 5 Taunt. 249; *Mason v. Corder*, 7 ib. 9. If the purchaser buy of one who has previously bought, but not taken a conveyance, he can call on the original vendor to convey to him, *Wood v. Griffith*, 1 Swanst. 54.

Licence to assign.

6. No consideration is necessary to support an assignment of a lease, the rents and covenants being sufficient, 1 Mod. 263.

Consideration.

6. In an assignment of a lease, the covenants must be qualified throughout, where it is intended to restrict them to the assignor's own acts. It has been held that a general covenant will not be re-

Covenants qualified in assignments.

Lease.

strained by a subsequent clause, *Gainsford v. Griffith*, 1 Saund. 50; *Barton v. Fitzgerald*, 15 E. 530.

Ad valorem
stamp neces-
sary.

7. By the 44 G. 3, c. 98, re-enacted by the 55 G. 3, c. 184, an assignment of a lease, although not under seal, requires an *ad valorem* stamp on the consideration money. (As to assignments of leases, see further, *BONDS for Payment of Rent, &c.*—*MORTGAGES and PURCHASES.*)

No. CLXXI.

Lease.

No. CLXXI.

Assignment of a Lease with an Assignment of Fixtures and Policy of Insurance. (General Precedent.)

Recital of lease. *This Indre* made &c. see *ante*, No. LXXXV. Betn (assignor) of &c. of the one pt and (assignee) of &c. of the or. pt *Whas* by indre of lease bearing date on or about the day of and made betn (lessor) of the one pt and and (original lessee) of the or. pt For the consons therein expssed the sd (lessor) to demise *All that* &c. with the appts unto the sd (lessee) his &c. &c. from the day of last past for the term of yrs and under the yrly rent covts condons and agrts as in and by the sd indre of lease are expssd contd and decl'd *And whas* by divers mesne assignments and assurs in the law parlarly by

Mesne assignments.

(a) If it be a city lease say, "*Whas* by indre bearing date &c. and made or mentd to be made betn the mayor and commonalty and citizens of the city of London of the one pt and the said (assignor) of the or. pt the sd mayor &c. Did demise unto the sd (A.) *All* &c. as the same are therein and hinafr parlarly described with the appts *To Hold* the same discharged of the land tax which had been redeemed unto the sd (A.) his &c. from &c. for and during &c. next ensuing subject to the yrly rent of £ paye to the sd mayor &c. their successors or at or in the office of receipts and paymts of money of the chamberlain of the sd city for the time being by quarterly &c. and the sd (assignor) did thby among other things covt to insure from fire all such erections and buildings as shd be erected upon the sd demised preses and at his own costs and chas within calr mths then next ensuing to completely finish and make fit for habitation the sd mess or tent thby demised to the approbation of the clk for the time being of the works of the sd city *And* that he shd not alien assign or orwise dispose [except by will only] of the sd indre of lease witht the licence and consent in writing of and from the sd mayor &c. under the penalty as therein is prescribed as by the sd indre under the corporate seal of &c. will more fully appear *And whas* since the date of the sd indre &c. the sd (assignor) hath completely finished the sd mess or tent to the satisfaction of the sd clk &c. and hath caused the same to be insured from fire in the sum of £ in the &c."

re of assnmt bearg date &c. the sd messe and preses became
ted in the sd (*assignor*) for the residue of the term which was
n to come and unexpired And *whas* the sd (*assignee*) hath
tracted with the sd (*assignor*) for the sale to him of the sd
se and preses comprised in the sd in pt recited indre of lease
the residue of the sd term of years at or for the price of

No. CLXXI.
Lease.

Contract for
sale.

(a) *Now this Indre witnesseth* That in conson of the sum
£ of &c. to him the sd (*assignor*) in hand well and truly

Testatum.

by the sd (*assignee*) at or before the sealing of these presents
rect whof he the sd (*assignor*) doth hby acknge and of and
on the same doth acquit rele and discharge the sd (*assignee*)
exs ads and ass for ever He the sd (*assignor*) *Hath* granted
gained sold assigned transferred and set over and by these

pts (b) *Doth* grant &c. unto the sd (*assignee*) his exs ads and
All that the sd messe &c. and all and singr or. the preses
mprised in the sd in pt recited indre of lease with their and

y of their appts togr with the sd in pt recited indre of lease (c)
d all the este right title term and terms of yrs to come and
expired trust property posson claim and demand whatsr both
law and in equity of him the sd (*assignor*) of in to and out

the sd messe &c. *To Have and to Hold* the sd messe &c. and
ses hby assd or intended so to be with their and evy of their

Habendum.

pts unto the sd (*assignee*) his exs ads and ass henceforth for
d during all the rest and residue now to come and unexpired
the sd term of yrs (d) subject to the rents covts condons and
is in the sd in pt recited indre of lease reserved and contd
lich on the tenant's or lessee's pt ought to be pd observed and
rformed And the sd (*assignor*) doth hby for himself his exs ads
d ass covt promise and agree with and to the sd (*assignee*) his
s &c. in manner followg that is to say That the rent covenants
pdons and agrmts in the sd in pt recited indre of lease reserved

Covenants from
the assignor.

(a) Where the licence of the lessor must first be had (see *supra*, sect. 5,) say,
And whas the sd (*assignor*) hath previous to the sealing and delivery of these
pts applied to and procured the licence of the sd (*lessor*) as by a memorandum
fmed upon the sd indre doth appear."

(b) "In pursuance of such licence as afd."

(c) If the policy of insurance be assigned at the same time, say, "and the sd
sity of insurance."

(d) "Togr with all bent and advantage to accrue from the sd policy of in-
surance."

No. CLXXI. and contd have been duly pd observed and performed up to the
Lease. day of last past *And (a)* that for and notwithstg any
 That lease is valid and sub- act matter or thing whatsr by the sd (*assignor*) made done or
 sisting. knowingly or willingly suffered to the contrary the sd hnbeft in
 pt recited indre of lease is at the time of the sealing and delivery
 of these prets a good valid and subsisting lease and demise in
 the law and not forfeited surrendered or become void and void-
 able *And* that for and notwithstg any such act deed matter or
 Assignor has good right to assign. thing he the sd (*assignor*) now hath in himself good right full
 power and absolute authty to assign and assure the sd messe
 and preses hby assd or intended so to be for and during all the
 residue and remdr of the said term of yrs in manner
 afl and according to the true intent and meaning of these prets
 For quiet en- *And furr* that it shall and may be lful to and for the sd (*as-*
 joyment. *signee*) his exs ads and ass from time to time and at all times
 hrafrt during the sd term of yrs peaceably and quietly
 to enter have hold occupy possess and enjoy the same messs
 and preses with their appts and to rece and take the rents issues
 and prfts thof to and for his and their own use and bent witht
 any lful let suit trouble denial eviction interruption claim or
 demand of or by him the sd (*assignor*) his exs or ads or any
 psn or psns lfully or equitably claiming or to claim by from
 Free from in- under or in trust for him them or any of them *And* that free
 cumbrances. and clear and freely and clearly acquitted exonerated releed and
 for ever discharged or orwise by the sd (*assignor*) his exs or ads
 well and sufficiently saved defended and kept harmless and
 indemnified of from and agst all and all manner of former and
 or. estes titles troubles chas and incumbs whatsr either already
 or to be hrafrt made done committed or suffered by the sd (*as-*
signor) his exs or ads or by any psn or psns lfully claimg or to
 claim by from under or in trust for him them or any of them
 save and except the rents covts condons and agrmts in and by
 the sd hnbeft recited indre of lease reserved and contd and
 which on the tenant or lessee's pt are or ought to be pd observed
 and performed *And furr* that the sd (*assignor*) his exs ads and
 ass and all or. psn or psns having or claimg or who shall or
 may have or claim any este right title int property or demand

(a) As to qualified covenants, see *Obs. 6.*

whatsoever either at law or in equity of in to or out of the said messe
 & tent and preses hby assd or intended so to be or any of them
 & any pt thof by from under or in trust for the sd (*assignor*)
 his exs or ads shall and will from time to time and at all times
 during the sd term of _____ yrs at the request and proper
 costs and chas of the sd (*assignee*) his exs ads and ass make do
 and exte or cause to be made done or extd all and evy such
 furr and or. lful and rease acts assnmts and assurs in the law
 whatso for the better more perfectly and absolutely assg and
 assurg of the sd messe &c. for the remr then to come and unex-
 pected of the sd term of _____ yrs as by the sd (*assignee*) his
 exs ads or ass or his or their counsel in the law shall be reasy
 devised and required so as (a) no such furr assnmts
 and assurs contain or imply any furr or or. covt or warranty
 agst the psn or psns who shall be requested to make any
 such furr assnmts or assurs and so as the pty or pties who shall
 be requested to make the same be not compelled or compellable
 for the making or doing thof to travel from his her or their
 native place or places of abode And the sd (*assignee*) doth hby
 & himself his hrs &c. covt &c. that he the sd (*assignee*) his hrs
 & shall and will from time to time and at all times hrafrtr
 during the sd term of _____ yrs granted by the sd in pt recited
 indre of lease well and truly pay or cause to be pd the yrly
 rent in and by the same indre of lease reserved which hence-
 forth shall grow due and paye in respect of the sd preses hby
 and at such time and in such manner as the same is thby
 reserved and also shall and will observe perform and keep all
 and singr the covts condons and agrmts in the sd indre of lease
 contd and which henceforth on the tenant or lessee's pt ought
 to be pd observed performed and kept And shall and will from
 time to time and at all times hrafrtr save defend keep harmless
 and indemnified the sd (*assignor*) his hrs exs ads and ass and his
 and their lds goods and chattels from and agst the paymt of
 the sd rent and the performance of the sd covts condons and
 agrmts and from and agst all and all manner of actions suits

No. CLXXI.
Lease.

Covenants from
 the assignee.

To pay rent.

To keep the
 covenants.

Indemnity to
 assignor.

(a) See sect. 3.

No. CLXXI. cause and causes of action costs chas dams claims and demands
Lease. whatsr for or on acct of the same or in anywise relating thereto (a).
In witness &c.



No. CLXXII.

No. CLXXII.

*Lease (by
 Indorsement).*

Assignment of a Lease by Indorsement.

Know All men that (assignor) of &c. for and in conson of the sum of &c. to him in hand &c. by (assignee) of &c. pd at or before &c. the rect &c. *Hath* bargained &c. to the sd (assignee) his exs &c. *All* &c. and singr the preses comprised in the within-written indre and mentd to be thby demised to A. B. with the apts togr with the within-written indre of lease And all the este &c. of him the sd (assignor) of in or to the sd preses or pt thof by virtue of the sd indre of lease *To Have* &c. the messe &c. and all and singr or. the preses with their apts unto the sd (assignee) his exs &c. for and during all the residue and

Assignment of
 fixtures.

(a) Where the fixtures are also to be assigned, this may be done by a further testatum, as follows: " *Whas* the sevl fixtures and or. things mentd in the schedule hereunder-written have been agrd to be taken by the sd (assignee) at the price or sum of £ *Now this Indre further witnesseth* That in conson of the sum of of lful money of Great Britain to the sd (assignor) in hand pd by the sd (assignee) at or before the signing and sealing these preste the receipt whof he the sd (assignor) doth hby acknge &c. (see the first testatum) *He* the sd (assignor) hath granted bargd &c. all and singr the stoves grates ranges copper shelves dressers goods chattels matters and things whater mentd and set forth in the schedule hereunder written or hereunto annexed and evy of them and evy pt and pcl thereof *To Have* &c. the sd goods chattels &c. hby granted &c. intended so to be and evy pt &c. unto the sd (assignor) his exs ads and as of his and their own proper goods and effects absolutely and for ever And the sd (assignor) doth hby" &c. (*clause of warranty*, see BILL OF SALE).

Recital of
 insurance.

Where a policy of insurance is to be assigned with a lease, then add " *And whas* by a certain deed poll in writing bearing date &c. and being or purporting to be a policy of insurance under the hands and seals of the directors of Compy he the sd (assignor) hath insured the sd preses agst dams by fire for the sum of And it hath been agrd that the same policy shall be asgd to the sd (assignee) in manner hnafr mentd *Now this Indre furr witnesseth* That &c. and in conson of the preses he the sd (assignor) *Hath* assigned &c. and by &c. Doth assign &c. *All that* deed poll or policy of &c. And all the right &c. with full power &c. (see *Assignment of a Debt*) *To have* &c. the sd deed poll &c. and all and evy sum or sums &c. and all and singr" &c. (see *Assignment of Policy of Insurance*).

and yet to come &c. Subject and witht prejudice to the rents
rights and condons in and by the within-written indre of lease
reserved and contd (*add covts from the assignor, as in last pre-*
cedent).

No. CLXXII.
Lease (by
Indorsement.

No. CLXXIII.

Assignment of a Lease by Indorsement by an Administrator
with Consent of the Lessor.

No. CLXXIII.
By Indorsement
by
Administrator.

Know all men by these Prests That (administrator) of &c. admor
all and singr the goods chattels rights and covts of the within-
named (intestate) decd and in conson of the sum of £
full money &c. to him in hand well and truly pd by (assignee)
&c. at or before &c. the receipt &c. (see General Precedent,
CLXXI.) Hath by and with the consent of the within-named
admr) testified by his exting these prests bargd sold assd trans-
ferred and set over and by these prests Doth [by and with the
consent as afd] bargain &c. unto the sd (assignee) his exs ads
and ass All that &c. and preses comprised in the within-written
indre and thin mentd to be thby demised with their and evy of
their appts togr with the within indre of lease and all the este
right title and int which he the sd (administrator) as admor of
the sd (intestate) as afd or orwise now hath or at any time hrfr
shall or may have claim challenge or demand of in or to all or
any of the sd preses with their and evy of their appts by virtue
of the within indre of lease or orwise as the admor of the sd
(intestate) To Have and to Hold the sd messe &c. and all and
hagr or. the preses with their and evy of their appts unto the sd
(assignee) his exs ads and ass for and during all the rest and
undue and remr yet to come and unexpired of the within-
mentd term of *yrs in as full ample and beneficial a*
manner to all intents and purps whatsr as he the sd (adminis-
trator) as admor his exs or ads might or cd in any manner have
held and enjoyed the same if these prests had not been made
subject and witht prejudice to the yrly rent of £ *in and*
by the within indre of lease reserved contd and to become due
and paye and to all and evy the covts clauses provos and agrts
this contd And the sd (administrator) for himself his hrs exs

No. CLXXIII. and ads doth hby covt and declare to and with the sd (*assignor*)
 By Indorsement his exs ads and ass that he the sd (*administrator*) hath not at any
 by time htofore made done committed or extd or wittingly or wil-
 Administrator. lingly permitted or suffered any act deed matter or thing whate
 whby or wherewith or by reason or means whof the sd menes
 and preses hby assd or intended so to be are is may can or
 shall be in any ways impeached chgd affected or incumbered in
 title charge este or orwise howsr And the sd (*administrator*)
 doth hby furr covt &c. (*Covenant for further assurance, see*
General Precedent, No. CLXXI.)

In witness &c. see ante, No. XLVI.

*Assignment of a Leasehold Estate as a collateral Security for
 the Payment of an Annuity for Lives, see ante, No.*
 LXXXVIII. ANNUITY.

Assignment of a Lease by way of Mortgage, see post,
 MORTGAGES.

No. CLXXIV.

No. CLXXIV.

*Parts of
 Leasehold
 Premises.*

*Assignment of certain Parts of Leasehold Premises (of which a
 Partition had been made) to one of the Parties intitled thereto
 in severalty, subject to a proportionate Part of reserved
 Rents, &c.*

Obs. Where different parties occupy different portions of land
 under the same lease, and are all equally liable to the whole rent and
 the performance of the covenants in the lease, it is usual for them to
 enter into cross covenants to indemnify each other, which will ac-
 company the deed, in which case it is like the following precedent, but
 the object may be effected in different ways, see further COVENANTS,
 LEASES.

*This Indre made &c. see ante, No. LXXXV. Betn W. P. of
 &c. and ors of the first pt H. A. and ors of the second pt and
 Recital of lease. I. R. of &c. of the third pt Whas by indre of lease bearing*

late &c. and expssd to be made betn I. D. of the first pt and
 he sd W. P. and ors of the second pt *It is witnessed* that for
 he consons thin expssd the sd I. D. did demise lease set and
 a farm let unto the sevl psns pties thto of the second pt their
 exs and ads *All &c. To Have and to Hold* the same unto the
 sevl psns pties thto of the second pt and their exs &c. from the
 day of then last past for the term of yrs and
 mths wanting six days subjt to the clear yrly rent of £
 for the first three years of the sd term and the clear yrly rent of
 £ for the remr of the sd term and to the observance and
 performance of the covts and agrts thin contd and on the tenant
 and lessee's pt to be pd observed and perfmd *And whas* the sd
 pieces and pcls of ld mentd and demised by the indre hnbeft
 recited were some time since divided into thirty-six lots which are
 laid down and delineated in the plan or ground plot thof drawn
 in the margin of these prests and a messe and dwellg house
 and offices have been erected and built upon each of the lots in
 the sd map or &c. distinguished by the numbers *And*
whas the sd pieces or pcls of ld and the messe &c. which have
 been so erected as afd are now vested in the sd W. P. &c. for the
 residue of the sd term of *Upon trust* for the sevl psns pties
 thto of the second pt and the sd I. R. as they the sd W. P. &c. do
 by admit and acknge *And whas* the sevl psns pties hto of the
 second pt and the sd I. R. lately determined to make a partition
 of and to divide in sevlty betn themselves the sd pieces &c. and
 the sd messes so erected and built as afd *And whas* such par-
 tition or division hath accordly been made by and betn the sd
 pties and it hath been agrd that the pieces &c. of ld hnaft
 described and also assd or intended so to be with their appts shall
 be taken and occupied by and assd to the sd I. R. as and for his
 pt and share in sevlty of and in all and singr the sd preses sub-
 ject nevss to the payment of £ as a proportionate pt of the
 sd rent of £ reserved by the sd indre of lease hnbeft
 recited and to the observance and performance of the covts reservd
 and contd in and by the sd indre of lease and on the tenant or
 lessee's pt to be pd observd and perfmd *Now this Indre wit-*
nesseth that in pursuance of and for effectuating the sd recited
 agrt and in conson of 10s. of &c. to each of them the pties hto of
 the first and second pts pd by the sd I. R. the rect &c. They the

No. CLXXIV.
Parts of
Leasehold
Premises.

Division of de-
 mised premises.

Agreement by
 parties of the
 second part so
 to make a par-
 tition.
 Partition made:

Testaturu.

Se. CLXXIV. *Part of*
Assignment
Provision.
— *of* I. P. &c. agree to their sevl and respive estes rights and in
in the pres but act first or otherwise and at the request and by t
direction of the sd sevl pens pties hto of the second pt testifi
by their sevlly exoner these prests *Have* and each and evy
them *Heth* bargai &c. And by &c. *Do and Doth* bargain &
And the sd sevl pens pties hto of the second pt according
their respive estates &c. *Have* and each and evy of them *Ha*
granted bargai &c. and by these prests *Do &c.* grant &c. w
the sd I. R. his exs ads and ass *All those* sevl lots pieces or p
of ld and preses on the sd plan or ground plot drawn in t
margin of these preses distinguished by the number with th
and evy of their rights members and appts *And all ways* &
And all the estate &c. To Have and to Hold the sd lots &
and all and singr or. the preses hby assd or intended so to
and evy pt and pcl of the same with their appts unto the sd
R. his exs ads and ass from thenceforth for and during all t
residue and remr of the sd term of &c. thin now to come
unexpired *Subjt* nevss to the paymt of the yrly rent of £
as a proportionate pt of the sd rent of £ reserved by the
indre *And subjt* also to the observance and performance of
covts and agrts in the sd indre of lease contd and which on
tenant or lessee's pt are or ought to be from thenceforth obs
and performd *And the sd sevl pens and pties hto of the* f
pt (*covenant that they have done no act to incumber*, see p
COVENANTS) *And (like covenant)* by the parties of the sec
pt And the sd I. R. doth hby &c. (*covenant to pay* proport
of rent and perform the covenants).

Habeat.

In witness, see ante, No. XLVI.



No. CLXXIV.—2.

No.
CLXXIV.—2.
Legacy.

*Assignment of a Legacy to a Trustee for an Infant by an Or
of the Court of Chancery.*

Stamp.

Obs. As to the stamp, see Pref. sect. 4.

This Indre made &c. see *ante*, No. LXXXV. Betn (*trus*
under a marriage settlement) of the one pt and (*trustee*) a tru
testial of will. nued for and in behalf of (*infant*) an infant of the or. pt W

*as the will of I. T. whby he devised and bequeathed his este
 he legacies therein charged) And whas by indre bearing
 &c. and made betn (intended husband) therein described of
 1st pt (intended wife) of &c. spinster and a legatee under
 will of the sd I. T. decd of the second pt and the sd (trustees)
 3rd pt In conson of a marre then intended and aftwds
 united betn the sd (I. H.) and the sd (I. W.) the sd (I. W.)
 assign unto the sd (trustees) the sd legacy of £ so be-
 hed to her by the will of the sd I. T. and thby directed to
 ised under the trusts of the sd term of yrs To Hold
 ame unto the (trustees) their exs &c. Upon such trusts as
 herein decld concerning the same for the bent of the sd
 (ee) during the term of her natural life and after her dece
 e bent of the sd (I. H.) and by the now reciting indre the
 trustees) are authorized to rece the sd sum of £ and to
 discharges for the same And whas (recite Act of Parlia-
 for vesting pt of the estes of the sd I. T. decd entailed by
 ill in trees for the purpe of selling the same and paying off
 ibs affecting those and or. estes) And whas the sd (trustees
 : Act of Parliament) have accordingly sold and conveyed
 d manors &c. so vested in them by the sd Act In Trust
 sold as afd to (purchaser) for the sum of £ being the
 price that could be got for them and have applied the monies
 g from the sale thof according to the directions of the
 Act as far as the same would extend And whas the sd
 tees) have by and out of the sd purchase money or sum of
 pd unto the sd (trustees under the settlement) the sum of
 in paymt of the sd legacy or sum of £ Upon
 trusts affecting the same by virtue of the sd in pt recited
 of settlemt the remaining pt of the sd sum of £ having
 exhausted in paying the sevl sums of money directed
 : pd thereout by the sd in part recited Act of Parlt And
 the sum of £ being the remaining pt of the sd legacy
 m of £ is now due and owing to the sd (trustees under
 ttlement) but all int for the same hath been pd up to the
 day of And whas the sd (legatee) hath departed
 life in the yr leaving the sd (husband) her husband
 the sd (infant) an infant of the age of yrs or there-
 ts her only child her surviving who by virtue of or under*

No.
 CLXXIV.—2.
 Legacy.

Of settlement.

Of Act of Par-
 liament.

Of sale by trus-
 tees.

Of payment in
 part of legacy.

Death of le-
 gatee.

No.
CLXXIV.—2.
Legacy.

Order to refer
to master.

Master's report.

Petition of in-
fant.

the sd recited will of the sd I. T. decd is seised of the estes thby devised for an este in tail in revn *And whas* by a decree or order of the High Ct of Chancery made and pronounced on or about day in a cause then and there depending in which the sd (*infant*) by (*guardian*) his guardian and next friend is pltff and C. F. and ors. are defts It was ordered that it shd be referred to (*master*) one of the Masters of the sd court to inquire what incumbs affected the real estes devised by the will of the sd I. T. decd and then remaining unsold *And whas* the sd Master in pursuance of the last recited order made his report in the sd cause bearing date &c. and thby certified that the pltff's real estes were *inter alia* subject to the sum of £ the residue of the sum of £ charged upon the pltff's este by the will of the sd I. T. deceased in favour of the sd (*legatee*) late the wife of the sd (*husband*) *And whas* the sd (*infant*) did on or about the day of present his petition to his Honour the Master of the Rolls stating that the sd sum was due to the trustees under the settlement made on the marre of the sd (*husband*) with the sd (*legatee*) his late wife but that all int thereon had been pd out of the rents and prfts of the pltff's sd real este *And that* the sd (*husband*) and his sd trustees had called for the sd sum of £ *And that* pursuant to a decree of the sd Ct the surplus of the rents of the pltff's sd real este had been from time to time invested in the purchase of Three per cent. Bk Annuities *And that* there was standing in the name of the Accountant-General of the Ct *In Trust* in the sd cause to the personal este acct of the sd pltff the infant the sum of £ in Three per cent. Bk Annties And in cash the sum of £ which Bk mos and cash constituted pt of the psnl este of the sd pltff *And that* the petitioner is desirous that so much of the sd Bk mos as shd be necessary for that purpe might be sold and applied in paymt of the sd sum of £ And that the mtge or or. secty for the sd sum of £ might be assigned to a trustee *In Trust* and for the bent of the sd petitioner his exs and ads and that it might be decl'd pt of the sd petitioner's psnl este the petitioner therefore prayed that it might be referred to the Master to take an acct of the principal money due on the sd mtge or charge of £ and to inquire whether it would be proper and for the bent of the petitioner that what shd be so

band due might be pd off and discharged by the sale of a sufficient pt of the sd Bk Annties for that purpe and that the sd Master might settle a proper transfer in case the pties differed about the same of the sd mtge or or. secty for the sd sum of £ unto a trustee to be approved by the sd Master who was stand possessed thof *In Trust* for the bent of the sd petitioner his exs and ads *And whas* by an order made in the last cited cause on or about the day of (*recite order in pursuance of the petition*) *And whas* (*recite the Master's approval of the sd (trustee)*) *And whas* by an order of the sd Ct *gives the order directing the Accountant-General to pay the sd to the sd (trustee)*) *And whas* the sd Master hath approved of these prests as a proper assnmt of the sd sum of £ and hath signified such his approbation on the margin these prests *Now this Indre witnesseth* That in conson of the sd sum of £ &c. being pt of the psl este of the sd (*infant*) *ordered (a)* to be pd forthwith after the exon of these prests by the Acct-Gen. of the Ct of Chancery to the sd (*trustees*) as afd direct of which sd sum of £ is intended to be ackngd by indorsement upon these prests They the sd (*trustees*) at the request and with the approbation of the sd (*husband*) testified *And in pursuance of the sd recited order of Chancery as* *Have* and each of them *hath* bargained sold &c. and by these prests *do* and each of them doth bargain sell &c. unto the sd (*trustee*) his exs ads and ass *all that* the sd sum of £ being the pt remaining unpd of the sd legacy or sum of £ bequeathed to the sd (*legatee*) decd late wife of the sd (*husband*) and by the hnbfes in pt recited will of the sd I. T. decd and by the same will directed to be raised under the trusts of the sd sum of yrs thby created as afd *And all int due or to grow due upon or in respect of the sd sum of £ And all the right title bent claim and demand whatsr at law or in equity of them the sd (trustees) and each of them into and out of the same together with all powers remedies and means requisite and necessary for calling in suing for or compelling paymt of the same* *To* *Have hold rece take and enjoy the sd sum of £ and int and*

No.
CLXXXIV.—2.
Legacy.

Master's approval of the trustee.

Also of the conveyance.

Testatum.

Habendum.

(a) By the practice of the Court of Chancery, money is not paid until the deed is executed.

No.
CLXXIV.—2.
Legacy.

No act to in-
cumber.

preses intended to be hby assd unto the sd (*trustee*) his and ass *In Trust* nevss for the sd (*infant*) his exs &c. at of his psl este And each of them the sd (*trustees*) doth himself his exs and ads &c. so far only as concerns his o deeds and defts covt and declare with and to the said (his exs ads and ass that they the sd (*trustees*) have not time hrtofe made done or committed or been privy to deed matter or thing whater whby or by reason whof sum of £ hby intended to be assd or any pt thof is c or may be affected charged relsd or incumbered in a howsr *In witness &c.* see *ante*, No. XLVI.



No. CLXXV.
Money.

No. CLXXV.

Assignment of Monies by way of collateral Securit

Stamp.

Obs. As to the stamp, see Pref. s. 4.

Settlement of
wife's property.

Trusts of the
settlement.

Annuity pur-

This Indre &c. see *ante*, No. LXXXV. Betn (*assignor* of the one pt and (*assignees*) trustees under the marriag ment of the sd (*assignor*) of the or. pt *Whas* by an indi date &c. and made betn the sd (*assignor*) of the first pt (i wife) of &c. spinster of the second pt and the sd (*trustees* third pt being a settlement &c. (see *last precedent*) after among other things that the sd (*I. W.*) was possesse intitl to various outstanding debts due to her and a tontine annty &c. *It was witnessed* That the sd (*I. W.*) the privy of the sd (*assignor*) assigned unto the sd (i *All* and singr the debts &c. *To Hold* the preses unto (*trustees*) their exs &c. *Upon Trust* after the solemniz the sd marre to pay the divds &c. to such pns and manner as she the sd (*I. W.*) shd during her life notwit her coverture direct or appt and in deft of apptment to same into the hands of the sd (*I. W.*) for her separate use her life and after her dece *Upon Trust* to pay all such di int to the sd (*assignor*) during his life And after his *Trust* for the chn of the sd intended marre in manner thir *And whas* the sd marre betn the sd (*assignor*) and the sd took effect soon after the exon of the sd settlt *And wha*

indre bearg date &c. and made betn (*grantor*) therein described of the first pt the sd (*assignor*) of the second pt and the sd (*trustees*) of the third pt In conson of the sum of £ pd by the sd (*trustees*) to the sd (*grantor*) he the sd (*grantor*) granted unto the sd (*assignor*) during the jt natural lives of the sd (*grantor*) and the sd (*assignor*) and the life of the longest liver of them one annnty or clear yrly sum of £ chagbe upon all the messes lds and heredit of him the sd (*grantor*) situated &c. Subject to redemption on payment of the sum of £ in manner therein mentd which annnty was purchased by the sd (*assignor*) with certain of the monies which by the sd settlmt were asd to the sd (*trustees*) And whas the sd (*assignor*) by bond or &c. in writing bearg date &c. became bound to the sd (*trustees*) for the paymt of £ lent to him by them by and out of the sd trust este and which sd sum is still due and owing to the sd (*trustees*) by the sd (*assignor*) And whas the sd M. (*assignor's wife*) departed this life leaving the sd (*assignor*) her husband and two chn namely E. G. of the age of &c. and W. G. of the age of &c. or thereabouts her surviving and upon the dece of the sd (*wife*) the sd (*assignor*) became intitld to rece for his sh the sd int divds &c. And whas the sd (*assignor*) hath received from the sd (*grantor*) in redemption of his afd annnty the sd sum of £ for which the sd (*assignor*) became accountable to the sd (*trustees*) as the trustees of the sd settlmt And whas the sd (*assignor*) hath agrd to secure the paymt to the sd (*trustees*) of the sd sum of £ And in pt performance of his agt hath by his warrant of atty bearg date &c. authorized certain atties of her Maj. Ct of at Westr to confess judgment agt him in or as of term last term next or some subsequent term at the suit of the sd trees for the sum of £

Now this Indre Witnesseth That in pursuance and furr performance of the sd agt he the sd (*assignor*) for himself his hrs &c. doth covt promise and agree to and with the sd (*trustees*) their heirs &c. in manner following that is to say That he the sd (*assignor*) shall and will well and truly pay or cause &c. unto the sd (*trustees*) or the survor of them or the exs &c. of such survor the sd sum of £ at or upon the day of witht any deduction or abatement whatsr And the sd (*assignor*) doth fully expressly direct authorize and empower the sd (*trustees*) or

No. CLXXV.
Money.

chased out of
the trust estate.

Bond given by
the assignor.

Death of wife.

Warrant of
attorney.

Covenant to
pay.

Power of at-
torney.

No. CLXXV. the survivor &c. to receive the said sums of £ and £ and also ^{Money.} all interest dividends and annual or other proceeds of the before mentioned trusts stocks funds and securities comprised in and subject to the trusts of the before recited indenture of settlement and to which he the said (*assignor*) is intitled for his life and from time to time when and as the same shall be received after full payment and discharge of all costs charges and expenses incurred and to be incurred in and about the execution of the said trusts to lay out or invest the residue thereof in the names of the said (*trustees*) or the trustees or the trustee for the time being at interest until the same shall amount to the said sum of £ or so much thereof as he the said (*assignor*) shall contrarily to his said covenant fail to make up and pay as hereinbefore mentioned. *Provided* that nothing herein contained shall oblige or require the said (*trustees*) their executors &c. to sue or even apply for the payment of the said sum of £ or any part thereof nor shall they the said (*trustees*) or any or either of them be in any wise answer for any money or more than they shall respectively actually receive. And the said (*assignor*) for himself his executors and administrators doth hereby covenant promise and agree with and to the said (*trustees*) or the survivor &c. that he the said (*assignor*) shall not nor will at any time or times hereafter take receive release or discharge any part of the said trust money and process without the consent in writing of the said (*trustees*) first had and obtained for that purpose. And that he the said (*assignor*) shall and will from time to time and at all times make do and execute and suffer or cause to be made &c. all and every such further and lawful acts deeds assents and assurances in the law whatsoever for the further better more perfectly and satisfactorily assuring the said sum or sums interest dividends and presences unto the said (*trustees*) or the survivor &c. and for the further and more effectually enabling them to recover receive and dispose of the same *In Trust* as aforesaid in such manner and form as by the said (*trustees*) their executors &c. or their counsel learned in the law shall be ready devised advised or required. And further that the said (*assignor*) his executors &c. shall and will from time to time and at all times hereafter well and sufficiently save defend keep harmless and indemnified them the said (*trustees*) each and every of them and each and every of their executors &c. and each and every of their goods chattels lands tenements and hereditaments from and against all costs losses damages and expenses which they or either of them shall or may suffer sustain or be put unto for or

Trustees not to be answerable.

Assignor not to receive trust estate.

Indemnity to trustees.

By reason or means of their or either of their acts in or about the exon of the trusts of the sd in pt recited indre of settlt or of having permitted or suffered any pt of the sd trust este to be recd by the sd (assignor) contrary to the strict meaning of the sd trusts or of any sums of money being due or owing by him the sd (assignor) to the sd trust este or orwise in relation thereto or to the trusts created by the sd in pt recited indre of settlt And lastly that he the sd (assignor) his hrs exs or ads shall and will within six mths after each of the sd two sons E. and W. of the sd (assignor) shall attain his age of 21 procure from him and deliver to the sd (trustees) or the survivor of them &c. a full and complete rele and indemnity in respect of the sd trust estees and his claims under the sd settlt *Provided* that nothing herein contd shall extend to injure or affect the ints of the sd E. and W. or either of them in and to such pts of the sd trust estees as shall then actually remain vested in the sd (trustees) or &c. And furr it is hby expressly decld and agrd by and betn the sd pties that they the sd (trustees) and the survor of them shall and will stand possessed of and interested in the stocks and secities to be purchased with the sd sum of £ hnbefe to be pd by the sd (assignor) as afd or in deft of such paymt in the int divds and annual proceeds hnbefe directed to be recd upon such and the same trusts and subject to such and the same powers provos declons and apptmts as the same are or ought to be subject or liable to under or by virtue of the sd in pt recited indre of settlt *In witness* &c. see ante, No. XLVI.

No. CLXXV.
Money.

No. CLXXVI.

Assignment of a Sum of Money by way of Security for the Payment of another Sum.

No. CLXXVI.
Money.

This Indre made &c. see ante, No. LXXXV. Betn (assignor) of &c. of the one pt and (assignee) of &c. of the or. pt *Whas* by indre &c. (recite settlement giving power of appointment to husband and wife) And whas (recite appointment of &c. by the husband at his dece to the assignor his son) Now this Indre witnesseth That in conson of £ to the sd (assignor) well and

Recitals.
Testatum.

No. CLXXVI. truly pd by the sd (*assignee*) the rect &c. He the sd (*assignor*)
Money. Hath granted bargained &c. and by &c. doth grant &c. unto the
sd (*assignee*) his exs &c. *All that* the sum of £ so given and
appted unto the sd (*assignor*) as hnbefe mentd and all the ~~ests~~
right title int property possibility claim and demand whater both
at law and in equity or orwise howsr of him the sd (*assignor*) of
in to out of or upon the preses hby assd or any pt thof resply
with full power and authy to and for the sd (*assignee*) his exs
ads and ass &c. (see *Assignment of a Debt*) *To Have* &c. the
sd sum of £ and all and singr or. the preses hby assd unto
the sd (*assignee*) his exs &c. to and for his and their own use
Proviso to *Subject* nevss to the proviso or condon hnafttr mentd *Provided*
make assign- *always* That if the sd (*assignor*) his exs or ads do and shall pay
ment void. unto the sd (*assignee*) his exs &c. the sum of £ with int
the same of £ *per cent.* at or before the end of twelve
mnths from the date hereof Then these prests shall be w
Covenant to *And* the sd (*assignor*) for himself his exs and ads doth hby co
pay. &c. with the sd (*assignee*) his exs ads and ass in manner follow
ing that is to say That he the sd (*assignor*) his exs or ads shall
and will pay unto the sd (*assignee*) his exs ads and ass the
sum of £ with int after the rate afd at or before the end
No act to in- twelve cal mths from the date hereof *And also* that he the
cumber. (*assignor*) hath not done &c. any act to incumber (see *Assign*
Good right to *ment of Bill of Sale*) *And* that he hath in himself good right
assign. and full power to assign the sd sum and the preses hby assd o
intended so to be unto the sd (*assignee*) his exs ads and ass in
Further as- manner afd *And furr* That he the sd (*assignor*) his exs and ads
surance. and all or. psns claiming or to claim any right title or int of and
in the sd sum of £ or any pt thof by from or under or in
trust for him the sd (*assignor*) his exs and ads shall and will do
all times hrafttr upon evy request of the sd (*assignee*) his exs ads
and ass but at the costs and chas of the sd (*assignor*) his exs
and ads do make and exte all such furr assnments and assur
for more perfectly and absolutely assigning and assuring the sd
sum of £ unto the sd (*assignee*) his exs ads and ass as by
him and them or his or their counsel in the law shall be advised
Power of sale. and required *Provided always* and it is hby decld and agrd
that if deft be made in payment of the sd sum of £ and int
hby secured or any pt thof resply contrary to the true intent and

meaning of these prests it shall be lful for the sd (*assignee*) his
 exs ads or ass absolutely to sell and dispose of the sd sum of
 £ and preses hby assd freed from the provo for redemption
 hnbefe contd and all or. equity of redemption whatsr by public
 action or private contract altogr or in pcls and generally in
 such manner as he the sd (*assignee*) his exs &c. shall think
 proper And to assign and assure the sd sum and preses or any
 or pts thof when sold unto the purchaser or purchasers thof
 he or they shall appt And to rece the purchase money for
 the same and thereout in the first place to pay the costs of such
 or sales and all or. costs incident thereto and in the next
 place to satisfy the sd sum of £ and int hby secured or such
 thof as shall then remain due And lastly after the payments
 to pay over the ultimate residue to the sd (*assignor*) his exs
 or ass *Provided also* and it is hby furr decld that any rect
 acts which shall be given by the sd (*assignee*) his exs ads and
 for any mos received under the power afd shall be a legal
 sufficient discharge or legal and sufficient discharges to the
 or psns paying the same and fully release the sd psn or psns
 ly from all obligation of seeing to the application of the sd
 money and from all liability by reason of the misapplication or
 application thof or any pt thof And that the purchaser or
 purchasers shall not be obliged to inquire whether debt shall
 have been made in paymt of the sd sum of £ and int or any
 thof contrary to the provo or covt hnbefe contd but that the
 reduction of these prests to such purchaser or purchasers after
 the time hnbefe limited for the paymt of the sd principal sum
 and int hby secured witht any memorandum of paymt of the
 same indorsed thereon and signed by the sd (*assignee*) his exs
 or ass shall be conclusive evidence of the nonpaymt thof
 of the right of the sd (*assignee*) his exs ads or ass to exte
 the power hnbefe given *In witness &c. see ante, No. XLVI.*

No. CLXXVI.
Money.

Assignment of a Mortgage, see post, MORTGAGES.

Mortgage. *Assignment of a Mortgage Term, and the Money due subject to the Trust to be declared by a Marriage Settlement, see post, SETTLEMENTS.*



No. CLXXVII.

No. CLXXVII.

Mortgage.

Assignment of a Mortgage from the Executors of a Person to a Person advancing the Money where the Mortgage is a Party.

Concurrence of
mortgagor why
necessary.

Obs. 1. An assignment of a mortgage is in reality the assignment of a debt, that debt being collaterally secured by a charge on real estate, *Matthews v. Walwyn*, 4 Ves. 118. A mortgagee may assign without the mortgagor being a party, *Newport's Case*, 51 S. 2, but the safer course is, that the mortgagor should join in the assignment. If an assignee pay arrears of interest it will not be considered as a discharge, and bear interest, unless the mortgagor concur in the assignment, *E. of Macclesfield v. Fitton*, 1 Vern. 169; *Smith v. Fildes*, 1 Ch. Cas. 68; *Achenhurst v. James*, 3 Atk. 271.

2. By the 3 G. 4, c. 117, amending the 55 G. 3, c. 184, the assignment, transfer, assignment, or reconveyance of any mortgage or other security provided no further sum of money be added to the principal or stock already secured, is chargeable only with the usual duty of 1l. 15s. and the further progressive duty of 1l. 5s. In the assignment of mortgages, see further MORTGAGES.

This Indre made &c. see ante, No. LXXXV. Betn (the) the executors of A. B. late of &c. deceased of the one pt and (the) (nee) of &c. of the or. pt. Was by an indre of assignmēt made on the date the day of and made betn (mortgagor) (the) described of the one pt and the sd A. B. decd of the (the) is witnessed that in conson of the sum of £ to h (mortgagor) pd by the sd A. B. he the sd (mortgagor) and demise unto the sd A. B. his exs &c. inter alia All messes &c. (parcels) To Hold the same unto the sd exs &c. from the day of then last past for of yrs under the yrly rent of a peppercorn Subject a proviso therein contd for redemption upon paymt by (mortgagor) to the sd A. B. of the sum of £ and in

ays and times and in manner therein mentd *And whas (recite No. CLXXVII. and given by mortgagor) And whas the sd principal sum of Mortgage.*
 : is still due and owing unto them the sd (assignors) as exs Mortgage money still
 fd upon or by virtue of the sd recited secties with an arrear of unpaid.
 at amounting to the sum of £ *And whas the sd exs having*
 ccasion for the sd principal money and int due to them as afd
 be sd (assignee) hath at their request agrd to pay them the sum
 f £ upon having an assignment of the sd principal sum of
 t and int due and to grow due thereon and of the sd mtgd
 credits in manner hnaft'r mentd *Now this Indre witnesseth Testatum.*
 hat in pursuance of the sd in pt recited agrmt and in conson
 f the sum of £ of &c. by the sd (assignee) to the sd (assign-
 vs) as exs as afd in hand well and truly pd at or before the
 ing and delivery of these prests in full of all principal money
 d int now due and owing to them as exs as afd upon or by
 ue of the sd secties the rect whof they the sd (assignors) and
 h of them do and doth hby acknge and of and from the same
 d evy pt thof do and doth acquit rele and discharge the sd
 signor) his hrs exs ads and ass for ever They the sd (assign-
 vs) Have bargained and assigned *All* that the sd principal sum
 f £ so due and owing to them as exs as afd and secured
 y the hnbeft'e in pt recited indre of demise and bond And all
 are and or. sums of money which from henceforth shall or
 ay grow due by way of int for or on account of the sd prin-
 pal sum of £ And also the sd messes and tents lds heredit's
 ad or. the preses comprised in the sd in pt recited indre of
 mise and the term of yrs thby created or granted as afd
 th their and evy of their rights and appts And all the este
 ht title int term and terms of yrs to come and unexpired pro-
 pty claim and demand whatsr of them the sd (assignors) as exs
 afd of into or out of the same preses or any pt thof and of into
 d out of the sd principal mos and int now due and owing on
 e sd recited mtge *To Have and to Hold* rece and take the sd Habendum.
 principal sum of £ and int and all and singr or. the preses
 y assd and evy pt thof unto the sd (assignee) his exs &c. and
 r his and their own proper mos secties and effects absolutely
 and for the more effectually enabling the sd (assignee) his exs Power of at-
 le. to recover and rece the sd principal mos and int and to have torney.
 and take the bent of the sevl secties for the same They the sd

No act to in-
cumber.

matters and things relative to the same And on re
principal mos or any pt thof to give sufficient recta a
and to make do and exte all or any or. act matter on
recovering and receiving the sd principal sum of £
And they do hby resply give and grant unto the sd
his exs ads and ass the full and whole power and auth
the sd (*assignors*) and each of them in and about
And do hby resply undertake to ratify and confirm
to be valid and sufficiently effectual and available to
and purps all and whatsr the sd (*assignee*) his exs &c. s
do in and about the preses And the sd (*assignors*) a
them for himself his exs &c. do and doth hby &c. cov
the executors have done no act &c. whby the sd pri
&c. is &c. received released discharged or incumbered
No. CLIX. *Assignment of a Debt. In witness &c.*

ASSIGNMENTS OF PATENTS.

- | | |
|-------------------------------------|------------------|
| 1. <i>Law of Patents.</i> | 3. <i>Stamp.</i> |
| 2. <i>Covenants in Assignments.</i> | |

—♦—
Law of patents. SECT. 1. By the 21 Jac. 1, against monopolies, a power
to the crown, in sect. 6, of granting a royal patent of priv
true and first inventor of any new manufacture, for the so
or making such manufacture for the space of fourteen year
whereof a property becomes vested in the patentee, which

to the contrary," as to restrict them to the acts of the assignor. This is of particular importance where the vendor is himself an assignee. It has been held, that a covenant in such an assignment for absolute right to convey, is not restrained by the other parts of the deed, *Hesse v. Stevenson*, 3 B. & P. 565.

Patent.

3. As to the stamp, see *ante*, ASSIGNMENTS, Pref. sect. 4.

Stamp.

No. CLXXVIII.

Assignment of a Patent.

No.
CLXXVIII.
Patent.

This Indre made &c. see *ante*, No. LXXXV. Betn (*assignor*) &c. of the one pt and (*assignee*) of &c. of the or. pt *Whas* Recital of letters patent.
by certain letters patent bearing date the &c. her present Maj.
And give and grant unto M. K. his exs ads and ass the sole
privilege of making paper from straw &c. for the term of 14 yrs
and for the respive places in the sd letters patent with a pro-
hibition to all psns whatsr other than the sd M. K. his agents
and ass to use the sd invention as in and by the sd letters patent
rolled in the High Ct of Chancery will more fully appear
And whas by indre of assnmt bearing date the day of Assignment to
and made betn the sd M. K. of the one pt and the sd assignor.
(*assignor*) of the or. pt For the consons therein mentd the sd
M. K. did grant unto the sd (*assignor*) certain pts or shares of
and in the sd letters patent *To Hold* to him the sd (*assignor*)
his exs &c. for and during the then residue of the sd term of 14
yrs *And whas* the sd (*assignee*) hath contracted with the sd Contract for
(*assignor*) for the sale to him of shares in the sd letters sale to assignee.
patent for the price or sum of £ *Now this Indre witnesseth*
that for and in conson of the sd sum of £ to the sd
(*assignor*) in hand &c. pd by the sd (*assignee*) at &c. the rect
He the sd (*assignor*) *Hath* granted &c. and by &c. *Doth*
grant &c. unto the sd (*assignee*) *All those* the pts or shares of
and in the sd letters patent And all the right title and int of
him the sd (*assignor*) of in and to the sd pts or shares
of and in the sd letters patent *To Have and to Hold* the sd
pts and shares of and in the sd letters patent with all bent and
advantage to arise therefrom unto the sd (*assignee*) his exs &c.

No.
CLXXVIII.
Patent.

Good right to
assign shares.

Quiet enjoy-
ment.

Further as-
surance.

in as full ample and beneficial a manner as he the sd (*assignor*) by virtue of the sd letters patent and the sd in pt recited indre of assignment might have had or held the same if these prests had not been made for and during all the rest and residue of the sd term of 14 yrs And the sd (*assignor*) doth hby for him- self his exs &c. covt &c. with the sd (*assignee*) in manner followg that is to say That for and notwithstanding (a) any act matter or thing to the contrary by him done or suffered he the sd (*as- signor*) hath good right full power and absolute authty to assign and convey the sd pts or shares of and in the sd letters patent And that he hath not by any means directly or indirectly forfeited any right which he ever had or might have had to the sd pts or shares And that he the sd (*assignee*) his exs &c. shall and may by virtue of these prests have rece and take all the profits and advantages whatsr that shall or may arise from the same pts or shares witht any let hindrance denial or interruption from the sd (*assignor*) his exs ads and ass And that he the sd (*assignor*) his exs and ads shall and will do &c. all and evy or act &c. for assigning &c. the sd pts &c. unto the sd (*assignee*) his &c. *In witness &c. see ante, No. XLVI.*

ASSIGNMENT OF PEWS.

- | | |
|---|-------------------------|
| 1. <i>Right to Pews by Prescription or Faculty.</i> | 2. <i>How defended.</i> |
|---|-------------------------|

Right to pews
by prescription
or faculty.

SECT. 1. The right to sit in a particular pew in a church arises either from prescription, as appendant to a messuage, or from a faculty or grant from the ordinary, for he has the disposition of all pews which are not claimed by prescription, *Gibs. Cod. 221.* No title can be good to a pew, either upon prescription or upon any new grant from the ordinary, to a man and his heirs, for the pew will always go with the house to him that inhabits it, *1 Burn's Ecc. Law, 360, Stocks v. Booth, 1 T. R. 432.* By the general law of common right, all pews belong to the parishioners at large, but the distribution of seats among them rests with the ordinary, whose officers, the church-

(a) See Sect. 2.

wardens, must place the parishioners according to their rank and station, but subject to the approbation of the ordinary. The incumbent has no authority in seating and arraying his parishioners, except as a member of the vestry, nor are the churchwardens bound to follow the directions of the vestry, *Pettman v. Bridger*, 1 Phill. 322. Persons having pews appurtenant to their houses cannot let them to non-resident persons, and thus by contract defeat the general right of the parish, *Walter v. Garner*, 1 Hagg. 317—319.

Pews.

2. In an action against the ordinary, the plaintiff must allege and prove repairs of the pew. If any repairs have been required within memory, they must be proved to have been made at the expence of the party setting up a prescriptive right. Mere occupancy does not give pews to particular houses, 1 Wils. 326. A possessory right is not good against the churchwardens and the ordinary, but is sufficient to maintain a suit against a mere disturber, *Pettman v. Bridger*, *sup.*

How defended.

No. CLXXIX.

Assignment of a Pew.

No. CLXXIX.

Pews.

This Indre &c. see *ante*, No. LXXXV. Betn. (assignor) of &c. of the one pt and (assignee) of &c. of the or. pt *Witnesseth* That for and in conson of the sum of £ to &c. by &c. *He* the sd (assignor) *Hath* bargd sold assd and by &c. *Doth* bargain &c. unto the sd (assignee) his exs &c. *All that* pew situate &c. and numbered as heretofore was occupied by the sd (assignor) and his family And all the este &c. *To Have* &c. the sd pew and all or. the preses hby assd or intended so to be *To the intent* that the sd (assignee) and his family shall and may from henceforth at all times hraftr peaceably and quietly enter into have use and occupy the sd pew for all such uses and purps as are customary in attending divine service *And* the sd (assignor) doth for himself &c. covt &c. that it shall and may be lawful for the sd (assignee) peaceably and quietly to hold and enjoy the sd pew hby assd or intended so to be witht the let hindrance or disturbance of the sd (assignor) or his family or his or their hys exs ads or ass or any psn or psns lfully claiming or to claim the same or any sitting therein by from or under them or any of them *And* for the better securing to the sd (assignee) the

Testatum.

Habendum.

Covenants from assignor for quiet enjoyment &c.

No. CLXXIX.	full and free bent of the sd pew and preses he the sd (
Power of attorney.	Doth hby make constitute and appt A. B. one of the of the ecclesiastical court at to appear for hi (assignor) in the sd court or elsewhere on his behalf be costs and chas of the sd (assignee) to give and acknge sent and approbation and direction for confirming th to the afd (assignee) and his family or orwise accord practice of the sd court he ratifying and confirming w sd A. B. or or. proctor of the sd court shall as proctor for the sd (assignor) lfully do or cause &c. in the pres furr the sd (assignor) promises declares and agrees not t annul or defeat these prests or any authty thereby give sd proctor but from time to time to confirm and esta same And the sd (assignee) doth hby for himself hi covt &c. that he the sd (assignee) his exs &c. shall and and truly pay all dues rates and contributions which hrafr lfully made and demanded for and concerning th And do and perform all needful repairs decorations and ments whatsr at his own costs and chas and wholly in the sd (assignor) his hrs exs and ads therefrom In wi see ante, No. XLVI.
Not to revoke.	
Covenant from assignee to pay dues, &c.	
and indemnify assignor.	

ASSIGNMENTS OF POLICIES OF INSURANCE

- | | |
|--------------------------------|-----------------------------|
| 1. Policies assignable. | 3. Sums on Policies not app |
| 2. Life Insurances void, when. | |

Policies as-
signable.

SECT. 1. Policies of insurance, although choses in action assigned at law as well as in equity, *Delany v. Stoddart*, 17. Such assignments are for the most part inserted in other deeds where a policy is assigned by way of mortgage, and in so cases, a separate deed is most convenient.

Life insurances
void, when.

2. By the 14 G. 3, c. 48, any insurance made on the life of any persons wherein the persons for whose use or on whose the policy is effected, shall have no interest, is void. And it held under this statute, that a policy of insurance effected by on the life of his son is void, he having no pecuniary interest *Halford v. Kymer*, 10 B. & C. 724.

Sums on poli-
cies not appor-
tionable.

3. Annual sums payable on any policy of insurance, are not to the law of apportionment, by 4 & 5 W. 4, c. 32, sect. 3.

No. CLXXX.

No. CLXXX.

Policies of Insurance.

Assignment of a Policy of Insurance on a Ship by an Executor.

Obs. The 6 G. 1, c. 18, which limited the privilege of granting policies of insurance upon ships and goods to the Royal Exchange and London Assurances, is so far repealed by 5 G. 4, c. 114, as to make it lawful for other corporate bodies to make such policies, see further, Dig. p. iii. tit. INSURANCE.

To All &c. (assignor) of &c. executor of the last will and test of A. B. decd sendeth greeting *Whas* the sd A. B. by a certain writing or policy of insurance granted by the Insurance Co bearing date the &c. and numbered under the hands and seals of directors of the sd compy insured the sum of £ upon the ship or vessel for her voyage from A. to L. as by the sd policy relation being thereto had will more fully appear *And* *plus (assignee) of &c. hath agrd with the sd (assignor) for an absolute assnmt to him of the sd policy of insurance for the sum of £* *Now these Prests witness* That for and in conson of &c. He the sd (assignor) *Hath* bargained sold and assd and by &c. Doth bargain &c. unto the sd (assignee) *All that* the sd policy of insurance so effected by him the sd A. B. decd and all and every sum or sums of money recoverable or to be recd upon or by virtue of the sd policy and all bent and advantage thereof And all the right title int property claim and demand whatsr of him the sd (assignor) as exr as afd togr with full power and authty to ask &c. (see *Assignment of a Debt*) *To Have* hold rece and take the sd policy of insurance and all sums of money recoverable thereon and all and singr or. the preses hby assd or intended so to be unto the sd (assignee) his exs &c. in as full ample and beneficial a manner as he the sd (assignor) might or could have done if these prests had not been made *And* the sd (assignor for himself &c. doth hby covt &c. with &c. the sd (assignee) that he the sd (assignor) hath done no act matter or thing whby the sd policy of insurance can shall or may be charged or incumbered in any way whatsr *In witness &c. see ante, No. XLVI.*

Recital of policy.

Habendum.

No act to incumber.

Assignment of Policy of Insurance to Trustees of a Settlement,
see *post*, SETTLEMENTS.

ASSIGNMENTS OF REVERSIONARY INTERESTS.

1. *Reversionary Interests, when assignable or otherwise.* | 2. *Effect of Assignments by a Husband.*

Reversionary
interests, when
assignable or
otherwise.

SECT. 1. Reversionary or expectant interests are not assignable at law, *Jones v. Roe*, 3 T. R. 88; 1 Fonbl. 217. And courts of equity will set aside assignments by expectant heirs, on the ground of inadequacy of consideration, 9 Ves. 246; 16 Ves. 512; 1 Fonbl. *ub. sup.*; *Fox v. Wright*, 6 Madd. 111.

Effect of as-
signment by a
husband.

2. An assignment by a man of a contingent interest in right of his wife, will not bind the wife, either at law or in equity, if she survive him before he has reduced it into possession, *Ld. Carteret v. Paschall*, 3 P. Wms. 199. But in equity a distinction is made between a voluntary assignment and an assignment for a valuable consideration. The wife surviving is not bound by his voluntary assignment, but otherwise where it is made for a valuable consideration, *Mitford v. Mitford*, 9 Ves. 99. The general assignment in bankruptcy has not the effect of reducing into possession the equitable interest of the wife, whose right by survivorship has been established against the assignees, *Mitford v. Mitford*, 9 Ves. 87.

No. CLXXXI.
Reversion.

No. CLXXXI.

Assignment of Reversion.

This Indre made &c. Betn (assignor) of &c. of the one pt and (assignee) of &c. of the or. pt Whas the sd (assignor) under and by virtue of an indre bearing date the &c. and made previous to the marre of I. D. decd and S. his wife her father and mother betn I. H. of &c. since decd and the sd S. his only daur of the first pt the sd I. D. then of &c. since decd of the second pt and (trustees) trustees named by and on behalf of the sd S. and both since decd of the third pt the sd S. became intitled to the reversionary int of and in the capital sum of £ Three per cent. Consolidated Bk Annties expectant upon the dece of her sd mother the sd S. D. And whas the sd capital sum &c. now stands in the names of (new trustees) for the uses of the sd settlmt And whas the sd (assignee) hath contracted with the sd (assign-

for the absolute purchase of all her reversionary right title
 int of and in the capital sum of £ Three per cent. &c.
 ctant upon the dece of her mother the sd S. D. at or for the
 or sum of £ *Now this Indre witnesseth* That for and
 onson of the sd sum of £ in hand &c. to the sd (*assign-*
 by the sd (*assignee*) well &c. pd at &c. she the sd (*assignor*)
 & bargained sold and assigned and by &c. *Doth* bargain &c.
 hat the remr or reversion of her the sd (*assignor*) expectant
 and to take effect immly upon and after the dece of the
 . D. of and in all that capital sum of £ Three per cent.
 now standing in the names of the sd (*T.*) as afd in the bks
 e Gov and Compy of the Bk of Engld and all the int divs
 proceeds thenceforth to grow due and paye thereon And
 he right &c. *To Have* &c. the sd reversionary sum of £ *Habendum.*
 all or. the preses hby assd &c. unto the sd (*assignee*) his exs
 o and for his and their own absolute use and bent *And* *Power of at-*
 he better enabling the sd (*assignee*) his exs &c. to have and *torney.*
 the reversionary right and int of and in the sd sum of £
 he sd (*assignor*) hath made constituted &c. the sd (*assignee*)
 xs &c. her true and lful atty and atties to ask demand have
 and take the transfer and assnment of the sd hby assd
 es and evy pt and pcl thof of and from the sd (*T.*) or the
 or of them and the exs &c. of such survor or whom else it
 l or may concern to transfer the same upon the dece of the
 . D. as afd and on rect thof to make sign and give such
 s acquittances rels and discharges in the law for the same
 hall be requisite and necessary And in deft thof to com-
 ce and prosecute with effect all such actions and suits and
 proceedings at law or in equity for the recovery thof as the
 utty or atties shall be advised and generally to do and per-
 n all and evy such furr and or. acts deeds matters and things
 he preses as he or they shall think fit And the sd (*assignor*)
 herself her exs &c. doth hby covt &c. with the sd (*assignee*)
 t she the sd (*assignor*) hath done no act &c. whby the sd
 ses or any pt thof are can may or shall be charged impeached
 orwise incumbered *And* &c. (*covenant for further assurance*
 : No. CLIX.) *In witness* &c. see *ante*, No. XLVI.



No. CLXXXII.
Shares.

No. CLXXXII.

Assignment of a Share in a Company.

Obs. As to assignments of shares in a company, see COPARTNERSHIP, Pref. sect. 7.

<p>Recitals.</p> <p>Contract for purchase, &c.</p>	<p><i>This Indre made &c. see ante, No. LXXXV. Betn (assignor) of &c. of the first pt (assignee) of &c. of the second pt and (trustees) trustees acting for the compy established by indre or deed of settlement dated the day of of the third pt Who sd (assignor) is possessed of or intituled to one share in the stocks or funds of the sd compy and hath contracted with the sd (assignee) for the sale to him of the sd one share for the price of sum of £ and the sd (assignor) hath given notice in writing at the office of the sd compy of his having procured the sd (assignee) to become the purchaser thof And in such notice described the name and place of abode of the sd (assignee) who is willing to become a member of the sd compy And when in pursuance of such notice the court of managers for the sd compy did proceed to take such notice into conson And did on the day of certify in writing that the sd managers had approved of the sd (assignee) as a fit psn to become a member of the sd compy Now this Indre witnesseth That in conson of &c. He the sd (assignor) Hath bargained &c. and by &c. Doth bargain &c. unto the sd (assignee) All that one share of him the sd (assignor) of and in the sd compy and the stocks and funds thof And all the right title int and property in and to the same and the divds and produce henceforth to arise and become paye upon or in respect thof To Have &c. unto the sd (assignee) his exs &c. the sd one share &c. And the sd (assignor) doth hby for himself &c. covt &c. with the sd (assignee) his exs &c. that he the sd (assignor) hath made done &c. no act &c. whly or by reason whof the sd one share &c. is may can or shall be forfeited impeached or incumbered in any manner howsr And the sd (assignee) in conson of the preses doth hby for himself &c. covt &c. with the sd (T.) as trustees for the time being of the sd compy That he the sd (assignee) shall and will at all times hrafr so long as he shall continue a member of the sd compy perform fulfil and keep all the rules orders and regula-</i></p>
<p>Testatum.</p>	
<p>Habendum.</p> <p>No act to incumber.</p>	
<p>Assignee to observe the rules of the company.</p>	

ns contd in the sd indre of settlement and evy or. order or No. CLXXXII.
gulation which shall hrafrt be made in pursuance of the sd in Shares.
recited indre *In witness &c.*

No. CLXXXIII.

No.
CLXXXIII.
Shares.

Another, of a Canal Share (Short Form).

I (*assignor*) of &c. in conson of £ pd to me by (*assignee*)
&c. Do hby bargain sell and assign to the sd (*assignee*) his
one share of the undertaking called &c. being No. of
shares in the sd undertaking *To Hold* &c. to the sd (*assignee*)
less ads and ass subject to the same rules orders and restric-
ns and on the same condons that I held the same immly before
exon hereof And I the sd (*assignee*) do hby agree to take
accept the sd share subject to the same rules orders restric-
ns and condons as afd *As witness* our hands

C. D. (*assignor*)

E. F. (*assignee*)

A memorial of this transfer was registered on the day
18

A. B. Clerk of the said Company.

No. CLXXXIV.

No.
CLXXXIV.
Shares.

Assignment of Shares in a Copper Mine.

Obs. As to the assignment of shares in a mining company, see
PARTNERSHIP, Pref. sect. 7.

This Indre made &c. Betn (*assignor*) of &c. of the one pt and
(*assignee*) of &c. of the or. pt *Witnesseth* That the sd (*assignor*) *Testatum.*
r and in conson of &c. Hath bargained &c. unto the sd (*as-*
signee) *All those* two full sixty-fourth pts shares or doles [the
hole into sixty-four equal pts shares or doles to be considered
divided] of and in that copper mine commonly called &c. of
r to which the sd (*assignor*) is possessed or intitled by virtue
f an indre of &c. Togr with the like pts or shares of and in all

No. CLXXXIV. Shares.	<p>copper copper ore lead tin tin ore and all or any or. met minerals now or hraft to be found broken or brough grass in upon or out of the sd copper mine or adventur pt thof And also of and in all tackle tools whims engines mills and implements of mining whatsr And of and in paths passages easements prfts commodities advantage members and apts And all the este &c. <i>To Have</i> &c. the &c. and all and singr or. the preses hby assd or intended unto the sd (<i>assignor</i>) his exs ads and ass according to tom of the stanneries of Cornwall from henceforth during all the residue of the term of yrs from the day of when the original grant was made from t of the soil subject to the paymt of the proportionable the lord's and bounder's dues being one-twelfth part to two full sixty-fourth pts or shares of all costs a henceforth to accrue in working trying and prosecuting mine and preses and to the articles regulations and agrt sd indre contd or that hraft may be made or entered i suant to the same for facilitating and prosecuting the and the affairs thof <i>And</i> the sd (<i>assignor</i>) for himself &c. doth hby covt &c. with the sd (<i>assignee</i>) his exs ads in manner following that is to say That he the sd (<i>assi</i> lfully possessed of or rightfully intitld unto the sd tw fourth pts &c. And that for and notwithstanding any thing contrary by him done he hath good right and full power and assign the sd two &c. And that it shall and may be the sd (<i>assignee</i>) his exs &c. from henceforth peaceal quietly to have and hold the same and rece and take th proceeds and prfts thof witht the lful let &c. of the sd (<i>a</i> his &c. (see <i>Assignment of a Lease</i>) subject as afd And t sd two &c. pts &c. hby assd &c. now are free and cl freely clearly and absolutely acquitted exonerated a charged of from and agst all and all manner of gifts gra gains sales assnments leases mtges charges and incumbr made &c. by the sd (<i>assignor</i>) his exs &c. and all and psn &c. <i>And</i> that the sd (<i>assignor</i>) and all and evy claiming or to claim under him shall and will from time and at all times hraft at the reasons request &c. m</p>
Covenants.	
Lawfully pos- sessed.	
Good right to assign.	
Quiet enjoy- ment.	
Free from in- cumbrances.	
Further assu- rance.	

&c. (for further assurance, see *Assignment of a Lease*). In witness &c. see No. XLVI.

No.
CLXXXIV.
Shares.

No. CLXXXV.

No. CLXXXV.

Stock.

Assignment of Growing Crops for securing a Sum of Money.

Obs. An assignment of stock and crops in trust to sell, and with Stamp. the proceeds to be produced by such sale to discharge debts due to the trustees and others, has been held to require, under the 55 G. 3, 184, not an *ad valorem*, but a common deed stamp only, *Coates v. Perry*, 6 Moore, 188; S. C. 3 B. & B. 48.

This Indre made &c. see ante, No. LXXXV. Betn (assignor) &c. of the one pt and (assignee) of &c. of the or. pt (u) Whas Recital of debt. the sd (assignor) stands justly indebted to the sd (assignee) in the sum of £ for money lent and advanced And whas the (assignee) hath commenced an action at law against the sd (assignor) in her Maj. Court of C. P. at Westr and the sd (assignor) hath been held to bail thereon And whas the sd (assignor) hath applied to the sd (assignee) and requested him to Agreement to sign cognovit. depend any furr proceedings in the sd action and hath proposed to confess the same by cognovit under his hand with liberty for the sd assignor to enter up judgment thereon in case debt shall be made in payment of the sd sum of £ contrary to the w^t hnafr contd And whas the sd (assignee) having suspended all proceedings in the sd action the sd (assignor) hath given a cognovit as hnbefe proposed and for the better securing the paymt of the sd sum of £ hath also agrd to assign the sd crops now growing on his farm in manner hnafr mentd Now this Indre witnesseth That in conson of the sum of £ Testatum. due and owing from the sd (assignor) to the sd (assignee) as id (b) He the sd (assignor) Hath bargained sold and asnd and

(a) If it be agreed that the assignment should be made to a trustee for the editor say "and to (trustee) of &c. a trustee for and in behalf of the sd (creditor)." *See above.*

(b) Where there is a trustee say "And also in conson of 10s. of &c. to the (D.) by the sd (T.) in hand &c. pd He the sd (D.) at the request and upon nomination of the sd (C.) testified by her being a pty to and exting these preste with &c." *see above.*

No. CLXXXV. by &c. doth bargain &c. unto the sd (*assignee*) his exs &c. All
Stock.

Power of at-
 torney.

Declaration of
 trusts.

and singr the crops of corn and grass now growing arising and being in and upon the farm situate lying and being in the parish of afd and consisting of the following parlars that is to say
 acres of wheat acres of barley acres of meadow grass acres of beans and acres of oats &c. (*parcels*) and all or. crops now growing on the sd farm And all the right &c. of him the sd (*assignor*) in to out of or upon the sd crops of wheat and or. crops and preses hby assd with full liberty for the sd (*assignee*) his servants workmen and agents with horses carts and carriages at all times hrafr as long as the sd crops of wheat and or. crops shall be growing standing or lying on the sd sevl pces of land to enter upon the same to see the state of such crops and for the purpe of cutting reaping and carrying away the same and for all necessary purps *To Have* *Hold* rece and take all and singr the sd crops and preses hby assd or intended so to be in as full large and ample a manner to all intents and purps as if posson had been taken of the same by the course of law or as the sd (*assignor*) might have held and enjoyed them if these prests had not been made *Upon Trust* (c) nevss in case deft shall be made in paymt of the sd sum of £ on the day and in the manner as in the covenant hnafr is mentd and expssd that the sd (*assignee*) his exs ads and ass do and shall sell the sevl crops hby assd And do and shall stand possessed of and interested in all sums of money to arise from such sale or sales *Upon Trust* in the first place to reimburse himself or themselves in all costs and exps which shall be incurred or which he or they shall pay sustain or be put unto in effecting

(c) If there be a trustee, and it be so agreed, say "That he the sd (T) his exs ads and ass do and shall at any time hrafr upon the request of the sd (C) her exs ads and ass either absolutely sell and dispose of the sd crops of corn hnbeff assd or intended so to be as the same are now growing to any pen willing to become the purchaser thof or do and shall permit the same crops to remain on the land until they are ripe and then do and shall cut and reap the same and after setting out the tithes thof (if required) do and shall carry away and absolutely dispose of the residue of the produce of the sd crops as he the sd (T) shall think fit with full power for you or him to purchase in the sd growing crops at any public auction and to resell the same at any future auction or orwise with liability for any loss to accrue thby and do and shall stand and be possessed of &c." see above.

the sale or sales as aforesaid And in the next place that he do and shall pay or reimburse himself (a) the said sum of £ with interest the same as in the covenant hereinafter is mentioned and expressed and after payment thereof then in trust to pay and make over the residue and surplus [if any] unto the said (assignor) his executors and assigns And it is hereby declared and agreed by and between the parties to these presents that for the purpose of carrying into execution the trust and it shall be lawful for the said (assignee) to make do and execute all contracts agreements acts matters and things as shall be necessary without any further consent or concurrence of the said (assignor) And that the receipts of the said (assignee) his executors &c. for all and every sum and sums of money which shall be paid and payed for the said crops by virtue of these presents shall be valid and sufficient discharge to the person or persons paying the same And further it is hereby declared and agreed that no neglect or default shall be imputable to the said (assignee) his executors and assigns for not proceeding to the sale of the said premises unless he or they shall be required so to do by some writing under the hand of the said (assignor) his executors &c. and that the said (assignee) his executors &c. shall not be answerable for any loss or damage which may happen to the said crops or the several pieces of land whereon they shall be growing unless occasioned by his or their wilful default and that he and they shall be respectively answerable for such sum or sums of money only as he or they shall actually receive And the said (assignor) for himself and his heirs executors and assigns hereby covenants &c. with the said (assignee) his executors and assigns that the said (assignor) his heirs executors and assigns shall and will well and truly pay unto the said (assignee) his executors &c. on or before the day of next ensuing the said sum of £ and interest And shall and will well and truly pay and discharge all taxes rates tithes and charges now due or which shall hereafter become due and payable or in respect of the several pieces of land whereon the said crops of corn hereby assigned or intended so to be are now growing or for or in respect of the tillage or management of the same crops.

In witness &c. see ante, No. XLVI.

No. CLXXXV.
Stock.

Indemnity to
assignor.

Contracts and
receipts to be
valid.

Not answerable
for losses.

Covenant to
pay, &c.

(a) If there be a trustee say "In the next place do and shall pay the said (C.) his executors and assigns the said sum of £ with interest &c." see above.

ASSIGNMENTS OF TERMS.

- | | |
|---|--|
| 1. <i>Assignment of Terms a protection.</i>
<i>Against what incumbrances.</i>
2. <i>Merger.</i>
3. <i>Assignment by a separate Deed.</i>
4. <i>A Term once assigned must be assigned again.</i> | 5. <i>What Deeds to be recited.</i>
6. <i>How several Terms ought to be assigned.</i>
7. <i>Stamp.</i> |
|---|--|

Assignment of
terms a pro-
tection.

Against what
incumbrances.

Merger.

SECT. 1. Terms are assigned to attend the inheritance by way of protection to a purchaser against mesne incumbrances. But in order to intitle a purchaser to this protection, he must be a purchaser for valuable consideration, not affected with any fraud or collusion, *Willoughby v. Willoughby*, 1 T. R. 763; But. Co. Lit. 290, b. a. l. 3, 5. In this case a mortgagee or a lessee is a purchaser *pro tanto*. The term which is to afford such protection must be a legal, not an equitable term. In courts of equity all incumbrancers have equal claims, and he who succeeds in gaining the legal estate, will be held to derive all the benefit of that title in a court of law, and thus by obtaining the legal estate a second mortgagee may obtain a preference over a first mortgagee, 3 Prest. Conv. 461. Such a term will serve as a protection against all estates, charges, and incumbrances created, intermediate between the raising of the term and the purchase or mortgage, but not against such as may exist prior to the term, nor against crown debts, 3 Sugd. V. & P. 10th ed. 68; 3 Prest. Convey. 465. The expence of the assignment of any terms of years, which a purchaser may require, must be borne by himself, but the title to them must of course be borne by the vendor, 3 Sugd. V. & P. 10th ed. 9.

2. Another important point of consideration in regard to terms arises from the doctrine of merger. Where a term of years and the inheritance meet in one person in the same right, the term is extinct, and merged in the inheritance. And also where a man has a term of years in his own right, as beneficial owner, and a freehold in *aufer droit*, as in right of his wife, or as executor or trustee, it has been held that the term is extinct, *Webb v. Russell*, 3 T. R. 393; 9 East, 372; but if in a case like this the union arises not by act of the party, but by acts of law, it has been decided, although not without question, that the term will not merge, 3 Sugd. V. & P. 10th ed. 20. So likewise if a man have a freehold in his own right, and a term in *aufer droit*, the term is not extinct, Plowd. 417; 3 Inst. 338; Sugd. *sub.*

p. So where the legal estate in the term, and the equitable estate the inheritance, are vested in the same person, the term will not merge, 9 Ves. 509. It was formerly held, that a term for years could not merge in a term, but the contrary seems now to be the settled opinion, 3 Prest. Conv. 195, *et seq.* Merger is not favoured in equity. therefore a term is merged at law, it will, notwithstanding, be revived in equity, provided that such revival shall appear to be mostly to promote the intentions of the parties.

Terms.

Terms should be generally assigned by a separate deed, as it is usually inconvenient to have the existence of terms disclosed in the deed conveying the inheritance.

Assignment by a separate deed.

It was formerly supposed that a term once assigned to attend inheritance would always attend, 3 Prest. Con. 462, and that a variation of a trust of terms would supersede the necessity of an actual assignment; but it seems now to be the general opinion of the profession, that a prudent purchaser can scarcely ever dispense with an assignment, 3 Sugd. V. & P. 10th ed. 11, *et seq.*

A term once assigned must be assigned again.

If a term have been once assigned to attend the inheritance, it is necessary to recite all the instruments affecting the fee from the time the term was created to the date of the deed of assignment, but not to recite the deed creating the term, the deed of conveyance by which the fee became vested in the person requiring the assignment, the deed of assignment by which the term became vested in the purchaser, after which the conveyance to the purchaser, or any other instruments affecting the fee subsequent to the assignment, ought to be recited, 3 Sugd. V. & P. 10th ed. 76.

What deeds to be recited.

Where several terms are to be assigned, it has been recommended to have two trustees, and to assign to each of them two or more of the terms in alternate succession, to prevent the possibility of merger, 3 Prest. Conv. 204. As to assignments of terms by a husband, see *subsequent precedents*.

How several terms ought to be assigned.

As to the stamp on assignments, when not otherwise charged, Stamp. *ante*, Pref. sect. 4.

No. CLXXXVI.

Assignment of a Term to attend the Inheritance for a Purchaser.

No.
CLXXXVI.
Terms.

This Indre made &c. see ante, No. LXXXV. Betn (vndor) &c. of the first pt (termor) of &c. of the second pt (purchaser) &c. of the third pt and (trustee) a trustee named by and on
OL. I. D D

No. CLXXXVI. Terms.	behalf of the (P.) of the fourth pt <i>Whas</i> (a) by indres bearing date the and days of resply and made betn
Recital of creation of term.	(mortgagor) therein described of the one pt and (mortgagee) also therein described of the or. pt the sd (mortgagor) <i>Did</i> grant bargain and sell unto the sd (mortgagee) <i>All</i> that pce or pcl of grd &c. <i>To Hold</i> the same unto the sd (mortgagee) his exs &c. from the day of next before the day of the date thereof for the term of ninety-nine years <i>Subject</i> nevss to the proviso or condon therein contd for redemption of the same pce or pcl of grd on paymt by the sd (mortgagor) his exs and ads unto the sd (mortgagee) his exs ads and ass of the sum of £ and int on the day then next <i>And whas</i> debt was made in paymt of the sd sum of £ and int on the day apptd for paymt thof by the sd recited indre whby the este and int of the sd (mortgagee) became absolute at law (b) <i>And whas</i> by divers mesne assnmnts and assurs in the law parlarly by an indre of assnmt bearing date the day of the pce or pcl of grd was assd to or became vested in the sd (termor) for the res and residue of the sd term of yrs <i>In Trust</i> nevss for the sd (V.) his hrs and ass and to attend the inhance of the sd preses which preses had been conveyed or orwise assured unto and to the use of the sd (V.) his hrs and ass by certain indres of lease and rele dated &c. and made betn &c. <i>And whas</i> under and by virtue of a certain indre of rele bearing even date with these prests and grounded upon a lease for a year dated the day next before the day of the date thof and which rele is made or expctd to be made betn &c. the sd pce or pcl of grd and preses comprised in the sd term of yrs as afd have for the conson thie mentd been granted released and conveyed or orwise assured unto and to the use of the sd (P.) his hrs apptees and ass as thie mentd <i>And whas</i> upon the treaty for the sd purchase it was agrd that the sd term of yrs shd be assd to the sd (trustee)
Assignment to trustee of term.	
Of conveyance to purchaser.	

(a) See sect. 5.

(b) If the term was created for securing the payment of an annuity, recite grant of annuity; if for raising portions, recite settlement; or if it be an assignment of a satisfied term, instead of this recital, add to the former recital, "And that the principal and int due thereon had been long since pd off and discharged." Or if the term was created by some settlement or deed of trust, then add to the recital of the settlement, "Upon certain trusts thiu deld and since performed and satisfied." See sect. 5.

e trusts hnaft deold *Now this Indre witnesseth* That
n of 5s. of &c. to the sd (*termor*) in hand &c. by the sd
at &c. *He* the sd (*termor*) at the request and by the
'the sd (*V.*) and at the nomination of the sd (*P.*) testi-
heir severally joining in and exting these prests *Hath*
d &c. *All that* &c. and all the este, &c. *To Have* &c.
sd (*trustee*) his exs &c. for and during the residue and
he sd term to attend the reversion freehd and inhance
heredts and preses intended to be liby assigned in order
same may be as a protection thof from all chas and
ances if any such there are And the sd (*termor*) for
&c. (*covt that he has done no act to incumber*) *In wit-*
see *ante*, No. XLVI.

No.
CLXXXVI.
Terms.

No act to in-
cumber.

No. CLXXXVII.

No.
CLXXXVII.
Terms.

*ent of a Term to secure Part of Purchase-Money for an
Estate sold out of Chancery.*

Indre made &c. see *ante*, No. LXXXV. Between (*as-*
of &c. of the one pt and (*assignee*) of &c. of the or. pt
/ a decree of the High Court of Chancery made and
ced in a cause then and there depending wherein (*cre-*
nd ors. creditors by bond of J. C. of &c. were pltffs and
. C. and E. his wife and J. R. C. by the name of J. C.
ager their eldest son and hr apparent W. C. and H. C.
their guardian R. C. and the sd R. C. were defts *It was*
and deold that the estes late of the sd J. C. and amongst
este called F. situate &c. with the sevl rights privi-
d appts thto which sd estes had been lately conveyed
d J. C. to (*trustees*) by deeds of rele dated &c. upon the
in mentd should be sold to the best bidder and that the
ing by such sale shd be applied as the sd decree directs
as the sd trust estes called F. with the sevl rights &c.
onging or therewith used have pursuant to the sd decree
it up to sale before (*master*) one of the masters of the
ourt of Chancery and the sd (*assignor*) has by the mas-
ort dated &c. been reported to be the best bidder for the

No.
CLXXXVII.
Terms.

same and has contracted for the same together with the manor of &c. as afd with the prfts members and appts thof at the sum of £ and by a subsequent order of the sd Court the sd report has been confirmed and the sd (*assignor*) is allowed to be the purchaser of the preses afd *And whas* by an order of the sd court dated &c. it was ordered that the sd (*assignor*) should be at liberty to pay the sum of £ pt of the sd sum of £ into the Bank in the name and with the privity of the Acctant-Gen. of the sd court subject to the furr order of the sd court and that the sd (*assignor*) should be at liberty to retain the remainder of the purchase-money in his hands having agrd with the debt A. B. to whom the sd sum of £ was due for principal money on mtge of pt of the sd purchased estes to continue the sd sum on the secty on which it then stood and still stands charged *And whas* the sd (*assignor*) hath applied to the sd (*assignee*) to advance him the sum of £ upon the secty of the D. pt of the este so purchased by the sd (*assignor*) in order to enable him to complete the purchase, which the sd (*assignee*) hath consented to do *Now this Indre witnesseth* that the sd (*assignor*) in conson of the sum of £ of &c. to him lent by the sd (*assignee*) for the purpose afd *Hath bargd* &c. and by &c. *Doth bargain* &c. unto the sd (*assignee*) his exs &c. all his este right title and int in and to the said farm called D. part of the este so purchased by him under the sd decree of the sd court *To Have and to Hold* the same to the sd (*assignee*) his exs &c. for and during the term of yrs hence next ensuing and fully to be complete and ended yielding and paying therefore yrly and every yr the rent of one peppercorn at &c. if required upon condon nevss that if the sd (*assignor*) his hrs exs ads or ass do and shall well and truly pay or &c. unto the sd (*assignee*) his exs &c. at &c. the full and just sum of £ togr with int for the same after the rate &c. without any abatement or deduction whatsvr in respect of any taxes &c. to be charged or imposed upon the preses or any pt thof by authty of Parliament or orwise howsr then and in such case these prests and the term and este thby created shall cease determine and be utterly void to all intents and purps whatsor *And the* sd (*assignor*) doth for himself &c. (*covenant to pay mortgage money, see post, MORTGAGES*) *And the* sd (*assignor*) doth hby

furr promise and agree to and with the sd (*assignee*) his exs &c. that upon the sd (*assignor*) obtaining a further conveye from the J. C. and E. his wife &c. or any or. psn interested in the sd resses he the sd (*assignor*) his hrs or ass shall and will do any such furr and or. rease act and deed for the furr and more lectual securing to the sd (*assignee*) his exs &c. the repaymt of e sd principal sum of £ and the int thof after &c. as by the (*assignee*) his exs &c. or his or their counsel in the law shall reasably advised or required And furr that he the sd (*as-ignor*) shall proceed with all convenient dispatch in procuring e title to the inhntance of the sd mtgd preses to be fully and lectually conveyed to him the sd (*assignee*) and his heirs And rr [that the sd (*assignor*) has done no act to incumber, us in t Precedent.]

No.
CLXXXVII.
Terms.

In witness &c. see ante, No. XLVI.

No. CLXXXVII.—2.

No.
CLXXXVII. 2.
Terms.

*Assignment of a Term in Trust to attend the Inheritance of
Lands purchased for a Charity.*

This Indre quadrupartite made &c. see ante, No. LXXXV. etn T. S. of &c. of the first pt R. S. of &c. of the second pt rustees) trustees of a certain charity or hospital commonly elled an hospital for &c. of the third pt and E. A. of &c. of the urth part *Whas* by a certain indre of demise bearing date the day of and made or mentd to be made betn M. G. son f E. G. decd and grand-nephew and devisee of M. G. decd of e one pt and R. H. of the or. pt he the sd M. G. in conson of to him paid by the sd R. H. did demise grant bargain and all unto the sd R. H. his exs ads and ass for and during the term f yrs from thence next ensuing at and under the yrly rent of pepper corn paye as thin is mentd subject to a provo thin contd hat if the sd M. G. his hrs exs or ads shd pay or cause to be aid to the sd R. H. his exs ads or ass the afd sum of £ ad int for the same at a certain day thin limited for paymt thof hat then the sd indre shd cease determine and be void And was by a certain deed poll bearg date &c. under the hand and

Recital of mort-
gage by demise.

Further charge.

Assignment of
term.

Will.

Contract for

sd £ and int *And whas* by indre bearing date
or mentd to be made betn W. G. adm of A. G. (form
his late wife decd who was one of the exs and residua
named in the last will and testamt of the sd R. H.
widow and relict of the sd R. H. and J. W. and
which sd E. and C. were the two or. exs of the sd R.
first pt the sd M. G. of the second pt T. W. of &c. 1
pt and R. S. pty hto of the fourth pt *It is witne.*
conson of the sum of £ pd by the sd T. W. to th
with the consent and by the direction of the sd E. H.
C. his wife and the sd M. G. testified as thin is men
full for the principal and int due on the sd recited
deed poll thin also mentd And also in conson of the
by the sd R. S. to the sd W. G. E. H. J. W. and
and of which sevl sums they did thby acquit &c. th
and R. S. and each of them resply They the sd E.
and C. his wife at the request of the sd W. G. and by
tion of the sd M. G. and on the nomination of the sd
assign transfer and set over *All that &c.* to hold the
the sd R. S. his exs ads and ass for the remr of the
yrs *In Trust* for the sd T. W. his hrs and ass to
wait upon the inhance of the sd preses and to prote
from and agst all mesne incumbs if any there be
the sd T. W. did in his lifetime duly make and publ
will and testamt in writing bearing date &c. and thb
devised unto the sd T. S. by the name and descrip
nephew T. S. third son of his late sister S. S. his l
All those &c. And whas the sd (trustees) have cont

as afd the residue of the sd term of yrs shd be trans-
 and assd over to the sd E. A. as in manner hnafr mentd
s Indre witnesseth that the sd R. S. for and in conson
 l sum of £ pd by the sd (T.) to the sd T. S. as afd
 in conson of 5s. of &c. to him the sd R. S. in hand
 e sd E. A. the rect &c. he the sd R. S. by the direction
 d T. S. testified by his being a pty to and sealing and
 g these prests and at the request and on the nomination
 l (T.) testified by their being pties &c. *Hath* bargained
 by &c. *Doth* bargain &c. unto the sd E. A. *All those*
 s &c. *To Have and to Hold* the same &c. hby assd or
 so to be with the appts unto the sd E. A. his exs ads
 from henceforth for and during all the rest residue and
 er of the sd term of yrs which is now to come and
 d freed exonerated and discharged of and from all and
 er of former or or. gifts grants bargains sales mtges
 intures entails and of and from all or. incumbs whatsr
 d made done or wittingly or willingly suffered by the
 whby the sd preses or any pt thof hby granted or
 so to be for the residue of the sd term may be im-
 or incumbered in title charge este or orwise howsr
 t nevss to and for the only use and bent of the sd (T.)
 and ass *Subject* nevss to such trusts uses intents and
 the governors of the sd charity &c. for the time being
 m time to time and at all times hrafr direct limit and
 the same and in the mean time and until such direction
 n and apptmt the sd yrs' term as to the sd four
 . shall be remain and continue in the sd E. A. his exs
 tend wait upon and go with the inhance of the sd four
 . intended to be convyd as afd to protect and preserve
 from and agst all mesne incumbs if any such there be
 all or may affect the sd preses intended to be convyd
 any manner howsr
 ness &c. see *ante*, No. XLVI.

No.
 CLXXXVII. 2.
 Terms.

Testatum.

Habendum.



Testatum.

(mortgagee), or the said pt and (mortgagee), or the said pt
Whas the sd (*mortgagee*) hath agrd with the sd (*mortgagor*) the sum of £ upo
advance to the sd (*mortgagor*) the sum of £ upo
of [among other heredit] the tithes comprised in and
be assigned by the within-written indre And by ind
and rele the lease bearing date the day before the r
rele even date with these presents and made betn th
gagor) of the one pt and the sd (*mortgagee*) of the
same tithes are with or. heredit assured unto and to
the sd (*mortgagee*) his exs &c. for securing to him p
sd sum of £ with int for the same after the rat
cent. per ann. on the day of now next ens
whas upon the treaty for the loan of the sd sum o
it was agrd that the within mentioned term of
far as the same concerns the tithes expssd to be a
the within-written indre be assigned unto the sd (*tr*
the trusts hnaft decl'd *Now* &c. in conson &c. the
gagor) hath bargained &c. the tithes and heredit co
and expssd to be assigned by the within-written ind
the este &c. To Have &c. the sd preses hby assd &c
sd (*trustee*) his exs &c. henceforth for and during all
&c. Upon the trusts and for the intents and purpo
That is to say *Upon Trust* in the first place for the
and more effectually securing unto the sd (*mortgag*
&c. payment of the sd sum of £ and int at the ti
manner mentd and apptd for paymt thof by the sd in
indre of rele And from and after paymt thof *In t*
sd (*mortgagor*) his exs &c. to be assd and disposed as

No. CLXXXIX.

CLXXXIX.
Terms.

*Assignment of a Term to a Trustee for several Purchasers
of an Estate sold in Parcels.*

This Indre made &c. see ante, No. LXXXV. Betn (*termor*)
&c. of the first pt (*vendtor*) of &c. of the second pt A. B. of
, and C. D. of &c. of the third pt and (*trustee*) of &c. named
and on behalf of the sd A. B. and C. D. of the fourth pt
has (recite the deed creating the term) And whas (recite the Recitals.
me assignments as in No.) And whas the sevl messes
tents lds and hereds comprised in the hnbefe in pt recited
re of release were put up to sale by public auction *And*
is the sd A. B. and C. D. became purchasers at the sd sale
the lots marked &c. *And whas* it has been agrd betn the
sd A. B. and C. D. and the sd (*vendtor*) that the sd sevl
mes &c. comprised in the sd hnbefe in part recited indre of
ase shall be assd to the sd (*trustee*) for all the residue of the
term in the manner and upon the trusts hnafter mentd *Now* Testatum.
Indre witnesseth That in pursuance of &c. and in conson of
to the sd (*termor*) by the sd (*trustee*) in hand &c. pd He the
(*trustee*) at the request &c. of the sd (*V.*) and at the nomi-
ion of the sd (*purchasers*) testified by their sevly being pties
und signing these prests *Hath* bargained &c. and the sd (*V.*)
th granted bargained sold ratified and confirmed and by &c.
th grant &c. All those the sd messes &c. and all and singr
the preses comprised in the sd term of yrs And all
ests &c. of him the sd (*termor*) of &c. in &c. *To Have &c.* Habendum.
sd messes &c. unto the sd (*trustee*) his exs &c. *Nevertheless*
on the trusts and to the intents and for the purps hnafr
ntioned That is to say As to all those &c. (*give the parcels*
A. B.'s purchase) being so much of the sd preses as were
rchased by the sd A. B. *In trust* for him the sd A. B. his In trust for the
and ass and to be conveyed and disposed of as the sd A. B. two purchasers.
hrs and ass shall direct and appt and in the mean time &c.
d as to all those (*describing the parcels of C. D.'s purchase*)
ng such or. pt or pts of the sd preses as were purchased by
sd C. D. *In trust* for him the sd C. D. his hrs &c. and ass
above) And the sd (*termor*) doth &c. (*covenant that he hath*
ie no act to incumber) *In witness* &c. see ante, No.

No. CXC.
Terms.

No. CXC.

Assignment of several Terms.

Obs. As to the assignment of several terms, see *Assignn Terms*, Pref. sect. 6.

Recitals.	<i>This Indre &c. Betn (termors of the several terms) of t</i>
	<i>second third fourth pts (vendor) of the fifth pt (purch</i>
	<i>&c. of the sixth pt (trustee of the first and third terms</i>
	<i>seventh pt and (trustee of the second and fourth terms</i>
	<i>eighth pt Whas (recite the terms according to their prior</i>
	<i>creation, shewing the several deeds by which they becam</i>
	<i>in the several termors, as in the first precedent) And w</i>
	<i>(recite the purchase deed from the vendor which compr</i>
	<i>premises intended to be hereby assigned) And whas u</i>
Testatum.	<i>treaty &c. (see first precedent) Now &c. in conson &c.</i>
	<i>sd (termor of the first term) Hath bargained &c. unto</i>
	<i>(trustee) his &c. All and singr the lds &c. comprised in</i>
	<i>term of yrs created &c. and now vested in</i>
Habendum.	<i>(termor) for the residue of the same term in trust as afd 7</i>
	<i>&c. the sd &c. unto the sd (trustee) his &c. for the resi</i>
	<i>but upon the trusts hnafr decld and contd And this In</i>
Further testa- tum.	<i>witnesseth &c. (here assign the second term of yr</i>
	<i>same manner to the second trustee, then with another wi</i>
	<i>part assign the third term to the first trustee, and then by t</i>
	<i>witnessing part in like manner the fourth term to the</i>
Declaration of trusts.	<i>trustee) And it is hby decld and agrd by and betn t</i>
	<i>hereto that the sd (trustee of the first and third terms)</i>
	<i>&c. shall stand possessed of and interested in the lds t</i>
	<i>assd or intended so to be and evy part thof for the respi</i>
	<i>dues of the sd terms of yrs and yrs /</i>
	<i>sd (trustee of the second and fourth terms) his exs &</i>
	<i>stand &c. in the lds &c. for the respive residues of the s</i>
	<i>of yrs and yrs Upon the trusts, &c. A</i>
No act to in- cumber the several terms.	<i>sd (termor of the first term) doth hby for himself &c. as</i>
	<i>concerning his own acts deeds and dfts and in respect</i>
	<i>the sd term of yrs and the preses therein cor</i>
	<i>And the sd (termor of the second term) doth &c. as to t</i>
	<i>in respect only of the sd term of yrs &c. And</i>

term of the third term) doth &c. (as before in respect of his term only) And the sd (termor of the fourth term) doth &c. before in respect of his term only) That they the sd (termors) have done no act to incumber) In witness &c. ante, No. XLVI.

No. CXCI.
Terms.

No. CXCI.

No. CXCI.
Terms.

Assignment of Two several Terms to attend the Inheritance and Surrender of another Term to merge.

This Indre &c. see ante, No. LXXXV. Whas (recite deeds and a will whereby sevl terms of yrs, yrs and yrs, and that after several mesne assignments the same were made in the present assignors) And whas it hath been agrd by and between the sd (vendors) and sd (purchaser) that the residue of the sd sevl terms of yrs and of yrs so far as they relate to or concern the sd messes &c. shall be assigned to the sd (trustees) In trust to attend the inhance in manner hereafter mentd and that the residue of the sd term of yrs shall be assd or surrendd so and in such manner that the same shall be extinguished Now this Indre witnesseth That in pursuance and pt performance of the sd hnbefe in pt recited agrt and also in conson of 10s. &c. the sd (first former trustee) on the nomination and at the request of the sd (vendor) and with the privity and consent of (cestui que trusts) testified &c. Hath bargd &c. and by &c. Doth bargain, &c. unto the sd (first new trustee) his exs &c. All &c. which are comprised in the first mentd term of yrs and now vested in the sd and which by the in pt recited indre of &c. were conveyd and ass to in the last mentd indre more parlarly is mentd To Have &c. unto the sd (first new trustee) his exs &c. henceforth for and during all the residue and remr of the sd term of yrs now to come and unexpired Upon the trusts nevss and for the ends hereinafter mentd And the sd (first former trustee) doth hby c. (covenant that he hath done no act to incumber) And this indre furr witnesseth, That in furr pursuance &c. and of 10s. by the sd (second new trustee) to the sd (second former trustee) and He the sd (second former trustee) Hath bargd &c. and

Further testam.
tum.

No. CXCI. by &c. *Doth* bargain &c. unto the sd (*second new trustee*) all &c.
 Terms. comprised in the sd second befelementd term of yrs &c. To
 Have &c. the sd messes &c. unto the sd (*second new trustee*)
 henceforth &c. *Upon the trusts* nevss &c. And the sd (*second*
former trustee) doth hby (*covenant that he hath done no act to*
 Declaration of trusts. *incumber*) And it is hby decl'd and agr'd by and betn the sd
 (*vendor*) and the sd (*purchaser*) and they sevly direct and appt
 that the sd (*first new trustee*) and the sd (*second new trustee*)
 shall stand and be possessed of the sd messes &c. hby assd and
 assur'd to them resply for the residues of the several terms of
 yrs and of yrs *Upon the trusts* following that
 is to say As to the sd messes &c. comprised in the sd term of
 yrs demised to the sd (*vendor*) his exs by way of
 mrtge as afd for securing the sd principal sum of £
 and the int thof And as to and for and concerning the sd
 messes &c. comprised in the sd term of yrs demised to
 the sd (*vendor*) his exs by way of mtge for securing the sd sum
 of £ And after payment of the sd sum of £
 and £ and the int thof and in the meantime subject
 thereto *In trust* for the sd (*purchaser*) his hrs appteas and as
 and to be assd and disposed of from time to time as he or they
 shall direct or appt And in the meantime to attend &c. the
 freehd revn and inhance of the sd messes &c. hnbefe assd To
 the end that the same freehd revn and inhance may by means
 of the sevl residues of the sd sevl terms of yrs and of
 yrs resply be protected of from and agst all incumbrs (if
 any) mesne and subsequent to the creation of the same terms
 Further testa- whatsr And *this Indre furr witnesseth* That in conson of the
 tum. principal sum of £ and int which were secured to the
 sd (*mtgees*) resply having been pd and in further pursuance &c.
 and also in conson of 10s. &c. to (*trustee*) of third term in hand
 Surrender. paid &c. He the sd (*trustee*) *Hath* surrendd and yielded up and
 by &c. *Doth* surrender and yield up *All* &c. which were demised
 and granted to the sd (*trustee*) his exs &c. for the sd term of
 Exception. yrs And all the este &c. exceptg and always reserv-
 Merger. ing out of the surrender hby made the sd &c. To the intent that
 the sd term may as to the messes &c. hby surrendd or orwise
 assd &c. be merged annihilated and extinguished and by way

If release of right surr or orwise cease determine and be void No. CXCI.
And the sd (*trustee*) doth &c. (*covenant that he hath done no act* Terms. ---
incumber)
In witness &c. see ante, No. XLVI.

No. CXCII.

No. CXCII.
 Terms.

*Assignment of Chattels real, to which a person is intitled in
 Right of his Wife, in Trust to Re-assign the same.*

Obs. 1. Terms for years and other chattels real, of which a wife is
 may be possessed during her coverture, will survive to her, unless
 her husband exercise some act of ownership in his lifetime, as by
 assignment or otherwise. He cannot dispose of them by will until
 he has so done, as the will does not take effect until after his death,
 and the law vests the term in the wife immediately after the decease,
 Co. Litt. 351, b; Com. Dig. Baron and Feme, E. 2; 1 Rep. Hus.
 & W. 196.

2. As to the stamp on assignments, not charged as conveyances,
see ante, ASSIGNMENTS, Pref. sect. 4.

This Indre &c. Betn (husband) of &c. of the one pt and (trustee) of &c. of the or. pt *Whas* the sd (*H.*) as husband of *M.*
 his wife formerly *M. T.* spinster is possessed of or intitled to
 divers messes and for divers terms of yrs and is desirous of
 becoming the absolute owner of the same to the intent that he
 may have the right of settling and disposing of the same by will
 or in any other manner as he shall think fit *Now* for the purps
 and in conson of 10s. in hand &c. pd to the sd (*H.*) by the
 sd (*T.*) He the sd (*H.*) *Hath* bargained sold &c. and by &c.
Doth bargain sell &c. unto the sd (*T.*) his exs &c. *All those*
 the messes or tents and lds whatsr of which he the sd (*H.*) is
 possessed or in which he is interested in right of his wife or as
 her husband for any term of yrs or any or. chattel int whatsr
 with their and evy of their apts And all the este &c. of him
 the sd (*husband*) *To Have and to Hold* the sd messes &c. and Habendum.
 all and singr or. the preses hby assd and evy pt and pcl thof
 with their apts unto the sd (*trustee*) his exs ads and ass hence-
 forth for the sevl residues and remrs of the sevl terms for years

No. CXCII.
Terms.

or or. ints which the sd (*husband*) hath in the sd messes resply now to come and unexpired for and during all such times terms for yrs and or. ints as the sd (*husband*) now hath in the sd messes &c. resply as fully and beneficially to all intents and purps as the sd (*husband*) can assign or orwise assure the same *Nevss* upon trust that the sd trustee his exs ads and ass do and shall immly after the exon of these prests re-assign the sd preses hby assd or orwise assurd with their and evy of their appts and all his and their este right title &c. unto the sd (*husband*) his exs ads and ass for all the then residues and remrs of the sevl terms for yrs or or. ints of the sd (*trustee*) his exs ads and ass therein *In witness &c.*



No. CXCII. 2.

No. CXCII.—2.

Re-assignment by Indorsement, in Pursuance of the foregoing Deed.

Know all Men by these Presents That in exon of the trust reposed in him the within-named (*trustee*) in and by the within-written indre and in conson of &c. to the sd (*trustee*) by the within-named (*husband*) in hand pd He the sd (*trustee*) *Hath* bargained sold and assigned and by &c. *Doth* &c. unto the sd (*husband*) his exs &c. *All* the messes &c. whatsr which by the within-written indre were and are assd or orwise assured by the sd (*husband*) to the sd (*trustee*) or intended so to be and evy pt and pcl of the same with their and evy of their appts And also all the este right title int property power claim and demand whatsr of him the sd (*trustee*) of in to upon and over the sd messe by force or virtue of the sd within-written indre or orwise howsr Togr with the same indre *To Have and to Hold* the sd messes &c. and all and singr or. the preses hby assd and evy pt &c. with their appts unto the sd (*husband*) his exs ads and ass henceforth for the sevl residues and remrs of the sevl terms for yrs and or. ints which he the sd (*trustee*) hath in the sd messes resply by virtue of the within-written indre and for and during all such time or times &c. and or. ints as the sd (*trustee*) *now* hath in the sd messes &c. resply by virtue of the same indre as

lly and beneficially as the sd (*trustee*) can assign or orwise No. CXCI. 2.
 sure the same *In witness &c.* see *ante*, No. XLVI. Terms.

No. CXCI.

No. CXCI.

*Assignment of a Wife's Term for Years by a Husband and a
 Wife to a Purchaser.*

Obs. A man having an absolute right to dispose of a wife's term
 years (see last precedent) may do so alone, but it is most usual to
 make the wife a party in an assignment to a purchaser.

This Indre made &c. see *ante*, No. LXXXV. Betn (*assignor*)
 &c. and M. his wife [before marriage M. R. spinster] of the
 pt and (*assignee*) of &c. of the or. pt *Whas* by an indre
 barg date &c. and made or expssd to be made betn J. H.
 herein described of the one pt and the sd M. [then M. R.
 spinster] of the or. pt For the consons therein mentd the sd
 H. did demise and lease unto the sd M. R. her exs ads and
 All that messe &c. with the appts *To Hold* the same unto
 the sd M. R. her exs &c. from the day of last past for
 during &c. from thence next ensuing and fully to be com-
 pte and ended subject to the rents covts and agrmts therein
 served and contd to be pd observed and performed *And whas*
 the sd (*assignor*) with the privity and approbation of the sd M.
 his wife hath contracted and agrd with the sd (*assignee*) for the
 absolute sale to him of the sd messe &c. for the residue &c.
Now this Indre witnesseth that in pursuance of &c. and in con-
 of the sum of £ to the sd (*assignor*) in hand &c. by the
 (*assignee*) well &c. pd the rect &c. *And also* for and in con-
 of the sum of 10s. of &c. to the sd M. in hand &c. He the
 (*assignor*) with the privity &c. of M. his wife testified &c.
 hath bargained &c. and by &c. *Doth* bargain sell &c. unto the
 (*assignee*) his &c. *All that &c.* (see *Assignment of a Lease*)
 and all the este &c. *To have and to Hold* the sd messe &c. unto Habendum.
 the sd (*assignee*) his &c. *And* the sd (*assignor*) for himself &c. Covenants,
 both hby covt &c. in manner following that is to say That for A subsisting
 and notwithstanding any act &c. by him the sd (*assignor*) and lease.
 M. his wife made &c. (*lease is good and subsisting*, see *Assign-*

No. CXCIV. Terms.	<p><i>ment of a Lease)</i> And that for and notwithstanding any such act deed matter or thing as afd he the sd (<i>assignor</i>) and M. his wife or one of them have or hath &c. in themselves himself or herself (<i>good right to assign &c.</i>) And that it shall be lful for the sd (<i>assignee</i>) his &c. peaceably and quietly to have &c. without the lful let suit &c. of or by him the sd (<i>assignee</i>) and the sd M. his wife or either of them their or either of their exs &c. And that free and clear and for ever discharged or orwise by the sd (<i>assignor</i>) his hrs exs or ads well and sufficiently saved defended and kept harmless and indemnified of from and agst all estes &c. whatsr either already had &c. or hrafr to be had &c. by the sd (<i>assignor</i>) and M. his wife or either of them their or either of their exs or ads or by any psn or psns lfully or equitably claiming or to claim by from under or in trust for them or any of them And furr that he the sd (<i>assignor</i>) his exs &c. and all and ery or. psn or psns having or claiming &c. by from or under or in trust for him the sd (<i>assignor</i>) and M. his wife or either of them their or either of their exs &c. shall and will &c. make and do &c. (<i>acts for further assurance</i>) And also that he the sd (<i>assignor</i>) his exs and ads shall and will pay the rent reserved by the afd in pt recited indre of lease up to and including Midsummer-day now next ensuing and shall and will save &c. the sd (<i>assignor</i>) his exs ads and ass and his and their lds tents goods and chattels resply from the same rent and from all costs and exps on acct of the breach or non-performance of any of the covts or agrts in the sd in pt recited indre on the pt of the sd M. her exs ads or ass to be performed from the commencement thereof And the sd (<i>assignee</i>) doth hby for himself his exs &c. covt &c. with the sd (<i>assignor</i>) that he the sd (<i>assignee</i>) shall and will &c. pay the yrly rent &c. and perform fulfil and keep all and ery the covts and agrts in the sd &c. in pt recited indre of lease contd on the pt of the tenant or lessee from henceforth to be performed and from the same rents covts and agrts and all costs and exps on acct of any breach neglect or deft of or in payment or performance thof as afd shall and will save harmless and keep indemnified the sd (<i>assignor</i>) and M. his wife and each of them and each of their exs &c. In witness &c. see ante, No. XLVI.</p>
Good right to assign. Quiet enjoyment.	
Further assurance.	
Covenant from assignee to indemnify assignor.	

ATTESTATIONS.

SECT. 1. An attestation of a deed is a memorandum by the witnesses who saw the same sealed and delivered, and who are to indorse or underwrite their names thereon. A deed sealed and delivered, it is said, may be good, for the seal is the essential part of the deed, 1 Inst. 7; 10 Co. 93. In the execution of powers of appointment, it is necessary to insert the words "signed." See APPOINTMENTS.

2. By the Statute of Frauds, 29 C. 2, c. 3, all devises and bequests of any lands or tenements devisable by the Statute of Wills, or by any particular custom, are required to be signed by the party devising the same, or some other person in his presence, and by his express directions, and to be attested and subscribed in presence of the devisor, by three or four credible witnesses. By the 7 W. 4 & 1 Vict. c. 26, repealing sec. 5, 6, 19, 20, 21 and 22 of that statute, the signature of the testator must be made or acknowledged by him in the presence of two instead of three witnesses, who must be present at the same time. As the Act does not render any particular form of attestation necessary, it is presumed that the *old forms* will remain in use. See further as to attestations, WILLS.

No. CXCIV.

Attestation of the Execution of a Deed by a Person Deaf and Dumb.

No. CXCIV.

Deaf and Dumb.

The within-written indenture was signed sealed and delivered [being first duly stamped] by the within-named A. B. who being deaf and dumb but capable of reading the same was first read over by him and he seemed perfectly to understand the same in the presence of

C. D. of &c.

E. F. of &c.

No. CXCV.

Attestation of the Execution of a Deed by a Blind Person.

No. CXCV.

Blind.

The within-written indre was signed sealed and delivered by the within-named A. B. [having been first duly stamped] and

No. CXCV. he being blind the same indenture was carefully and audibly
Blind. read over to him in the presence of

C. D. of &c.

E. F. of &c.



No. CXCVI.

No. CXCVI.

Attorney.

Attestation of the Execution of a Deed as the Attorney.

Signed sealed and delivered by the within-named C. D. as the attorney of the within-named A. B. [being first duly stamped in the presence of

E. F. of &c.

G. H. of &c.



No. CXCVII.

No. CXCLVII.

*Power of
Attorney.*

Attestation and Testimonium of a Deed executed under a Power of Attorney from Two.

Signed sealed and delivered [being first duly stamped] by the within named A. B. as the attorney of the within-named C. D. and E. F. and in the names and as the several acts and deeds of the sd C. D. and E. F. in the presence of

G. H. of &c.

I. K. of &c.



No. CXCVIII.

No. CXCVIII.

Testimonium.

The Testimonium.

In Witness whereof A. B. of &c. hath by virtue of a deed-pow or letter of attorney under the hands and seals of the sd C. D. and E. F. bearing date the day of 18 and hereunto annexed put the hands and seals of the sd C. D. and E. F. the day and yr first above written

C. D. (*seal*) by A. B. his attorney.

E. F. (*seal*) by A. B. his attorney.

(a) If the letter of attorney concern other property, a true copy of the same should be annexed.



No. CXCIX.

No. CXCIX.
Interlineations.

estations where there happen to be Interlineations, &c.

ed sealed and delivered [being first duly stamped] by
hin-named A. B. the words (*copy the words*) having been
sly interlined in the fourth and fifth lines of the first
r “written over obliterations between” &c. *as the case*
) in the presence of &c.

No. CC.

No. CC.
As Attorney.

tion of a Deed executed by one Party in his own Right,
as the Act of another of the Parties by Virtue of a
ver.

ed sealed and delivered [being first duly stamped] by
ve-named [*or “within written”*] A. B. with his own name
his own act and deed and afterwards as the attorney
the name and as the act and deed of the within-named
y virtue of the authty given to him the sd A. B. for that
e by the indenture of assignment from the sd C. D. to
sd A. B. and which is recited in this instrument in the
e of &c.

No. CCI.

No. CCI.
Will.

Attestation of a Will.

sd sealed published and declared by the sd testator as
his last will and testament in the presence of us who in
sence and at his request and in the presence of each
ave hereunto subscribed our names to each sheet as wit-
hereto (*and if there are two parts say, “as we have also*
each sheet of another part of his will at the same

No. CCII.

Testimonium.

No. CCII.

Testimonium of a Will.

In Testimony (or, "*In Witness*") whereof I the sd A. B. the testator have to two parts, ("each part" or "this part" &c. of) this my last will and testament contained in sheets of paper set my hand and seal namely to first sheets my hand and to the and last of each part (or "of this part") my hand and seal the day of in the year of our Lord 18 .

ATTORNMENTS.

1. *Definition of an Attornment.* | 2. *Stamp Duty on Attornment.*

Definition of an
attornment.

SECT. 1. Attornment is, properly, the acknowledgment by the tenant of a new lord, or the agreement of the tenant to the grant of the seignory of a rent, or of a reversion and remainder, Co. Litt. 309 a. Since the 4 & 5 A. c. 16, and 11 G. 2, c. 19, an attornment is no longer necessary to the validity of a grant, and is therefore seldom made, except occasionally to mortgagees, or in the case of a recovery in ejectment.

Stamp duty on
attornment.

2. A mere attornment, not containing an agreement to pay such rent as shall be agreed upon, requires no stamp, *Cornish v. Searell*, 8 B. & C. 47.

No. CCIII.

Mortgagee.

No. CCIII.

Attornment from a Tenant to a Mortgagee in Possession by Ejectment.

Know all Men that I the within-named (*tenant*) did on the day of last past attorn and become tenant to the within-named (*mortgagee*) and agree (*a*) to pay such rent and at such times as are therein mentioned and in testimony thof did give one shilling in the name of attornment in the presence of whose names are hereunto subscribed.

(a) As to the stamp, see *supra*, sect. 2.

No. CCIV.

No. CCIV.

*Several Tenants.**it of several Tenants by Direction of the Mortgagor.*

o whom these prests shall come A. B., C. D. and E. F.
ing Whas A. B. holds and rents of the sd (mort-
rtain farm called &c. and situate &c. and C. D. holds
F. holds &c. And whas the sd sevl farms are now
ge to (mortgagee) of &c. and the sd (mortgagor) is
desirous that the sd (mortgagee) should have posson
ive prestes Now Know ye that the sd A. B., C. D.
by the direction of the sd (mortgagor) testified by his
rtty to and signing these presents do hby severally
y over the sevl rents due and paye for their respive
each of them the sd A. B., C. D. and E. F. have given
g in the name of attornment and in pt paymt of the
and witness &c. see ante, No. XLVI.

AUCTIONS.

titutes an Auction.
uction within the Statute
s.
sell by Auction.
s and Conditions of Sale.
the Sale.
Agent for both Parties.
an Agent without written
y.
uthority.
must not exceed his Au-

t the Sale.
y competent Persons.
iddings how far admis-
therwise.
rt of Purchase Money.
f Deposit to Auctioneer.
r Bill by Auctioneer.
r Interpleader Act.

Effect of Auctioneer's Insolvency.
Investment of the Deposit.
 8. *Auctioneer's Liability as to Charge*
of Goods.
Proceeds of Sale.
 9. *Remuneration of Auctioneer.*
 10. *Auction Duty a Charge upon Auc-*
tioners.
When the Duty attaches.
Remission of the Duty to the
Owner of the Property.
 11. *Validity of the Contract.*
Particulars and Conditions of
Sale.
Biddings at the Sale.
Provisions of the Statute of Frauds.
Signing the Contract.
Contract entire or otherwise.
Effect of paying the Auction Duty.

An auction is a sale by competition, where the highest purchaser, but to constitute a sale within the Auction

What consti-
tutes an auction.

<u>Auctions.</u>	<p>Acts it is not necessary that it should be conducted in any particular manner. The words of the 19 G. 3, c. 56, s. 3, are "by outcry, knocking down of hammer, by candle, by lot, by parcel, or by any other mode of sale at auction, or whereby the highest bidder is deemed to be the purchaser," and therefore a sale in a private room, where several persons were present, and a bargain was struck with one who offered the most, was held to be a sale within the auction laws, <i>Walker v. Advocate-Gen.</i> 1 Dow, 114; and any thing in the nature of a bidding is within the Act, as candlestick biddings, <i>R. v. Taylor</i>, 13 Price, 636; S. C. M'Clel. 362; dumb biddings and the like, <i>Cruce v. Crisp</i>, 3 East, 340; but it appears that where property is put up to sale, and there is no person that bids, this will not be deemed an auction within the Act, the bare proposal of a sum by an agent for the owner not being held to be a bidding, <i>ib.</i> and see <i>Capp v. Topham</i>, 6 East, 392; S. C. 2 Smith, 443.</p>
What comprehended under the law of auctions.	<p>The law of auctions is affected not only by the revenue laws, but also by the general law regulating the transfer of property real and personal. In this twofold point of view it embraces various matters as regards the Statute of Frauds, the licence to sell by auction, the conditions of sale, the conduct of the sale, the biddings at the sale, the deposit and the auction duty.</p>
Sales by auction within the Statute of Frauds.	<p>2. It was for some time a matter of question, whether sales by auction were within the Statute of Frauds. In one case it was expressly decided that they were not, <i>Simon v. Motivos</i>, 3 Burr. 1921; but that case has been overruled by a variety of subsequent decisions, and it is now settled that the provisions of that Act must be complied with in sales by auction, whether of real or personal estate in the same manner as in sales by private contract, see Dig. p. ii. tit. FRAUDS (STATUTE OF).</p>
Licence to sell by auction.	<p>3. No one can sell any thing by auction without taking out an excise licence; and in the case of selling particular exciseable articles, he must take out a special licence in addition from the commissioners of excise; or for the sale of plate, watches or patent medicines a licence from the commissioners of stamps. On taking out a licence, the auctioneer is required to enter into a bond to deliver in an account to the Excise Office of each sale. The enactments regulating the licence and the bond are contained in the 19 G. 3, c. 56; 43 G. 3, c. 130; 6 G. 4, c. 81; 7 & 8 G. 4, c. 53; and 4 & 5 W. 4, c. 51; see further Bateman on the Excise Laws, and Bateman on the Law of Auctions; also Dig. p. ii. tit. AUCTIONS.</p>
Particulars and conditions of Sale.	<p>4. The particulars or conditions of sale, which more immediately concern the parties themselves, are of the first importance, and re-</p>

quire to be drawn up with special care, see *post*, No. CCXV.; also
CONDITIONS OF SALE.

5. The conduct of the sale rests with the auctioneer, who at all times was held to be an agent for the vendor, *Beznell v. Christie*; and according to the later decisions, he has been held to be also an agent for both parties, *Emerson v. Heelis*, 2 Taunt. 38; *Kemys v. Proctor*, 3 V. & B. 57; S. C. 1 J. & W. 350; and as an agent he cannot delegate his authority, and cannot therefore authorize any one, not even his own clerk, to sell without the consent of the owner of the property, *Coles v. Trecothick*, 9 Ves. 236; although for some purposes the clerk may also be an agent for both parties as well as the auctioneer himself, *Payne v. Cave*, 3 T. R. 148; *Gosbell v. Archer*, 3 Ad. & Ell. 500; S. C. 4 Nev. & Man. 485; S. C. 1 Har. & Woll. 31.

Auctions.

Conduct of the sale.

Auctioneer an agent for both parties.

No written authority is necessary to constitute the auctioneer an agent for both parties, the seller giving authority by his instructions to sell, and the buyer, to whom the conditions of sale, pasted on the auctioneer's box, are a sufficient notice of the terms by his bidding alone, *Simon v. Motivos*, 1 Bl. 599; S. C. 3 Burr. 1921; *Hinde v. Woodhouse*, 7 East, 558; *Emerson v. Heelis*, 2 Taunt. 38; *Shelton v. Livius*, 2 Tyrw. 436; *Bird v. Boulter*, 4 B. & Ad. 443; and an authority may be implied by certain acts without any verbal instructions, as if the owner of a horse send it to a common repository for the sale of horses, or the proprietor of goods send them to an auction room, *Pickering v. Bush*, 15 East, 42; and so an auctioneer's clerk may bind the purchaser as well as the vendor by an entry made in their presence, as by their silence when the hammer falls he is considered to have their authority to execute the contract on their behalf, *Farebrother v. Simmons*, 5 B. & A. 333. As to the signature by the auctioneer or his clerk within the Statute of Frauds, see Dig. p. **§ tit. FRAUDS (STATUTE OF).**

Auctioneer an agent without written authority.

Implied authority.

An auctioneer, in conducting a sale by auction, cannot deviate from the strict terms of his instructions; if he does, he will be personally answerable for the consequences, *Powell v. Sadler*, cited Paley, P. & A. 80; and therefore if he sell by private contract property intrusted to him to sell by auction, he will be held liable, *Daniel v. Adams*, Amb. 495; so if the auction duty attaches on a sale through his neglect, he cannot recover the same, *Capp v. Topham*, 6 East, 392; *Jones v. Nanney*, 13 Price, 76; S. C. M'Clel. 25. As to the duty and liability of the auctioneer with regard to the biddings at the sale, and the deposit after the sale, see *infra*.

Auctioneer must not exceed his authority.

6. To complete a sale by auction, there must be a bidding on the

Biddings at the sale.

- Auctions.** one side by one as a purchaser, and an acceptance of the bidding by the auctioneer, signified by the fall of his hammer, *Payne v. Case*, 3 T. R. 148; and before the hammer is down, the purchaser may retract his bidding, *ib.*; but the retraction must be made loud enough to be heard by the auctioneer, otherwise it will be of no avail, *Jones v. Nanney, ub. sup.*
- Biddings by competent persons.** The bidding must be by some person capable of being a purchaser, and therefore a bidding by a lunatic or idiot would be void, on the general principle that such person cannot make a valid contract, *Yates v. Boen*, 2 Str. 1104; and so a bidding by a drunken man, *Pitt v. Smith*, 3 Campb. 38; and so it is not competent to an auctioneer to make a bidding, unless he acts as a duly authorized agent, *Coles v. Trecothick*, 9 Ves. 248.
- Private biddings how far admissible, or otherwise.** The courts at one time discountenanced private biddings, holding them to be a fraud upon the purchaser, *Bexwell v. Christie*, Comp. 395; and the Acts of Parliament, which permit a private bidding on behalf of the vendor, were held to be made for the protection of the revenue, and not to interfere with private rights, *Howard v. Castle*, 6 T. R. 642; it seems, however, now to be settled, that a private bidding is admissible when used only to prevent the property from being sold below its real value, *Smith v. Clarke*, 12 Ves. 477; therefore where a person is employed, not for a defensive purpose, but to screw up the price, the sale has been held bad, *ib.* 483; so likewise where more than one person is employed, *Wheeler v. Collier*, 1 Mood. & M. 123; *R. v. Marsh*, 3 Y. & J. 331; so likewise where, in the conditions of sale, it is stated that the estate is to be sold "without reserve," *Meadows v. Tanner*, 3 Madd. 34. To obviate all questions, the vendor ought, as is usually done, to give notice by a stipulation in the conditions of sale, that the owner may bid once in the course of the sale. See further, *post*, CONDITIONS OF SALE.
- Deposit part of purchase money.** 7. After the completion of the sale, it is usual to require a sum to be paid down by way of deposit; and this payment will be deemed to be in part of purchase money, and not as a pledge, *Pordage v. Cole*, 1 Saund. 320; but it will not be deemed in equity to be sufficient part performance of a contract so as to take the case out of the Statute of Frauds, *Main v. Melbourne*, 4 Ves. 720.
- Payment of deposit to auctioneer.** If by the conditions of sale the deposit is made payable to the auctioneer or solicitor, the payment ought to be immediately required, *Hanson v. Roberdeau*, 1 Peake, 120. The auctioneer, in receiving the deposit, is deemed a mere stakeholder, and not an agent, as in the case of the sale; and he cannot legally part with it until the sale is completed, and it appears to whom it properly belongs, *Burrough*

Skinner, 5 Burr. 2639; and he will be answerable to the purchaser for the deposit, though he may have paid it over to the vendor, *Edwards v. Holding*, 5 Taunt. 815; S. C. 1 Marsh. 377; but if he retain the money, he is not liable to pay interest for it, *Lee v. Munn*, 1 Taunt. 45; S. C. 1 Moore, 481; although he place the money in the funds, and make interest of it, *Harrington v. Hoggart*, 1 B. & Ald. 577; and it makes no difference that the vendor desires the money to be put out to interest, if the purchaser does not join in the request, *ib.*

Auctions.

Where there is an adverse claim, the auctioneer may either file an interpleader bill, *Farebrother v. Prattent*, 5 Price, 303; S. C. 1 Dan. 64; *Annesley v. Muggridge*, 1 Madd. 593; or he may seek relief under the Interpleader Act, 1 & 2 W. 4, c. 58, *Allen v. Gilby*, 1 D. P. C. 113; but he cannot file a bill of interpleader, if he insist on retaining out of the deposit either his commission or the auction duty; for interpleader is, where the plaintiff is wholly indifferent between the parties, and the right to which will be fully settled by interpleader between the defendants, *Mitchell v. Hayne*, 2 Sim. & Stu. 63; if, however, upon a bill filed for an injunction the court order the deposit to be paid into court, it will, it seems, deduct the charges of the auctioneer, *Annesley v. Muggridge*, 1 Madd. 393; yet without prejudice to any question as to so much of the deposit as is retained, *Yates v. Farebrother*, 4 Madd. 289; and under the Interpleader Act, an auctioneer paying the deposit into court was held intitled to receive his costs out of the fund so paid in, *Pitchers v. Edney*, 1 Bing. N. C. 720.

Interpleader bill by auctioneer.

Relief under the Interpleader Act.

Where a vendor resists the application of the vendee that the deposit in the auctioneer's hands shall be paid into court, he shall be charged with the loss occasioned by the auctioneer's failure, *Fenton v. Browne*, 14 Ves. 144; and where the deposit, pending any suit for specific performance, is invested by order of the court, it will be deemed part of the purchase money, and the vendor must abide by the rise or fall of the funds, *Poole v. Rudd*, 3 B. C. C. 49. So where the purchaser invested the deposit, and giving notice to the vendor, the latter returned no answer, it was held that the advantage of a rise and the loss by a fall of the stock belonged to the purchaser, *Roberts v. Massey*, 13 Ves. 561.

Effect of auctioneer's insolvency.

Investment of the deposit.

Where the deposit has been paid to the vendor, and he fails to complete his contract, he is answerable to the purchaser not only for the deposit, but also for interest thereon, *De Bernales v. Wood*, 3 Campb. 258; *Maberly v. Robins*, 5 Taunt. 625; S. C. 1 Marsh. 8; and the purchaser is intitled to interest from the time the pur-

Purchaser intitled to interest on deposit.

- Auctions.** chase should have been completed, *Farquhar v. Farley*, 7 Taunt. 592; S. C. 1 Moore, 323, recognized in *Harrington v. Hoggart*, *ib. sup.*; and the case is the same if the money is paid to an agent for the vendor, *Duke of Norfolk v. Worthy*, 1 Campb. 337; but the plaintiff's remedy for the return of the deposit is at law, and a court of equity will not give relief in such cases, *Sainsbury v. Jones*, 2 Beav. 428; yet where, after a bankrupt's estate has been sold and the purchaser has paid a deposit, the fiat is superseded, the court will order the return of the deposit, without compelling him to file a bill, *Ex parte Fether*, 1 Buck, 428; and in some cases a purchaser has been held not intitled to a return of the deposit, as where a bill for specific performance filed by a purchaser has been dismissed, the court will not order the deposit to be returned, as that would be decreeing relief, *Bennet College v. Carey*, 2 B. C. C. 300. So where there is an implied agreement between the seller and the buyer, that, if the former will annul the contract, the latter will not compel a return of the deposit, it appears that the purchaser cannot afterwards bring an action for the recovery of the deposit, *Clark v. Upton*, 3 Man. & Ry. 89; and see *Horford v. Wilson*, 1 Taunt. 12. In *Saville v. Saville*, 1 P. Wms. 745, it was said, that if a purchaser submitted to forfeit his deposit, a court of equity would not compel him to complete the contract; but the reporter adds, that it was not the general law of the court at that time; and it seems that a purchaser cannot elect to put an end to the agreement by forfeiting the deposit, 1 Sugd. V. & P. 80, 10th ed, citing 2 Mer. 506; see further as to forfeiture, *post*, CONDITIONS OF SALE.
- Deposit not returnable.**
- Forfeiture of deposit.**
- Auctioneer's liability as to charge of goods.** 8. On the general principle of the auctioneer being an agent, he is bound to take as much care of the goods intrusted to him as he would take of his own; and if loss or damage arises to it through his default, he will be liable to the owner for it, *Maltby v. Christie*, 1 Esp. 340; *sed secus* if it be purely accidental, *ib.*
- Proceeds of sale.** An auctioneer is in general not responsible for the purchase money, unless he has received it; but if he sell on credit, without the express order of his principal, he is then liable to the latter for the purchase money, *Williams v. Millington*, 1 H. Bl. 81. When he has received the purchase money, it is his duty to pay over the same to his employer immediately; and this he may do, although the latter is to his knowledge in insolvent circumstances, *White v. Bartlett*, 9 Bing. 378; S. C. 2 M. & Sc. 515; so where the owner of goods, sold by an auctioneer, had committed an act of bankruptcy before the sale, but without the knowledge of the auctioneer, held, that payment by the latter of the proceeds to the owner was protected by the Bank-

apt Acts, *Coles v. Robins*, 3 Camp. 183; but he will be liable to the real owner of goods, if, after a written notice that they did not belong to his employer, he persists in the selling them, *Hardacre v. Stewart*, 1 Esp. 103; so where he sold the goods of B. as the goods of A., and suffered the buyer to pay A., he could not afterwards maintain an action for the price, *Coppin v. Walker*, 7 Taunt. 237; S. C. 3 Marsh. 497; and if after a sale he rescinds the contract with the buyer, without the express consent of the owner, he will be liable to him in an action of assumpsit for the proceeds of the sale, *Nelson v. Aldridge*, 2 Stark. 435; and where he sold goods wrongfully under a *fi. fa.*, without being expressly retained by the sheriff, held, that he could not maintain an action against the latter for any breach of an implied contract of indemnity, *Farebrother v. Ansley*, 1 Campb. 343.

Auctions.

9. An auctioneer, like every other agent, is intitled to remuneration, but the extent of the remuneration is a matter of stipulation; for where there is no contract, and no usage of trade, there will be no commission, *Taylor v. Brewer*, 1 M. & S. 290; and he has a lien for his commission and expences as well as for the auction duty, not only upon goods in specie, but also upon the proceeds, *Drinkwater v. Goodwin*, Cowp. 251; but he may forfeit his right to all remuneration, if, by his negligence or unskilfulness, no benefit accrue to his employer from the service performed, *Capp v. Topham*, 6 East, 402; or if he so act as to deprive himself of his remedy against the parties, as if he sells goods belonging to both A. and B., as the goods of A. only, and suffers the buyer to settle with A. for them, without giving him notice that he had any claim on them, he cannot recover the proceeds from the buyer, *Coppin v. Walker*, 7 Taunt. 243; S. C. 3 Marsh. 497.

Remuneration
of auctioneer.

10. By the 19 G. 3, c. 56, the duty is made a charge upon the auctioneer, without regard to the subsequent completion of the contract, as appears from the language of the statute, speaking of the owner as becoming the purchaser of his own property, and providing that the duty should be remitted to him, *Christie v. Att. Gen.* 6 B. P. C. 520. The auctioneer may deduct the duty from the proceeds of sale, or recover it from the seller in case there are no proceeds, unless he have failed in following the directions of the Auction Acts as to notices, in which latter case he will be compelled to pay the duty out of his own pocket, *ib.*; and so where, for want of compliance with the requisites of the Statute of Frauds, a sale was held not to be binding, the auctioneer could not recover the duty from the purchaser, *Jones v. Nanney*, 13 Price, 76; S. C. M'Clel. 25.

Auction duty a
charge upon
auctioneers.

<i>Auctions.</i>	The duty attaches on any sale where there is a bidding, whether the sale be binding or otherwise, <i>Jones v. Nanney, ub. sup.</i> ; and whether the sale be regularly conducted or otherwise, provided there is a bidding, see <i>supra</i> , sect. 1.
When the duty attaches.	
Remission of the duty to the owner of the property.	By the 19 G. 3, c. 56 (see Dig. p. ii. tit. AUCTION), the commissioners are authorized to make an allowance for the duty in cases where the property is bought in by the purchaser, or some one in his behalf, according to certain conditions, which must be previously complied with; and if through any default of the auctioneer, the requisites of the Act have not been complied with, he must bear the loss himself, <i>Capp v. Topham, ub. sup.</i> By another provision of the Act, if the vendor's title prove bad, the duty will be allowed, but the commissioners will require to be satisfied that the vendor has used every endeavour to make out a title. As to the amount of duty, and what things are exempt from duty, see Dig. p. ii. tit. AUCTIONS.
Validity of the contract.	11. The validity of the contract for a sale by auction depends upon many circumstances: First, as to the particulars of sale, whether they are correct or otherwise, see <i>post</i> , PARTICULARS OF SALE and as to the conditions of sale, whether they have been complied with or otherwise, see <i>post</i> , CONDITIONS OF SALE.
Particulars and conditions of sale.	
Biddings at the sale.	Secondly, whether the sale has been properly conducted as to the biddings. The employment of puffers will vitiate the sale, see further, <i>ante</i> , sect. 5.
Provisions of the Statute of Frauds.	Thirdly, whether the provisions of the Statute of Frauds have been complied with. In the first place, contracts for sale by auction must, to be valid, be in writing; but it seems to be now settled that an auctioneer, being an agent lawfully authorized by both parties to sign a contract for them, his writing down the name of the purchaser on the sale bill opposite to the lot purchased, is a note or memorandum in writing sufficient to satisfy the intent of the statute, <i>Emmerson v. Heelis</i> , 2 Taunt. 38; and so the signature of the auctioneer on the sale of goods has been held to be within the 17th section of the same statute, <i>Hinde v. Whitehouse</i> , 7 East, 558.
Contracts in writing.	
Contract entire or otherwise.	In the next place, it has been a question, whether on sales by auction the contract is to be considered as entire or separate; and this seems to have depended upon whether the enjoyment of the whole was essential to the enjoyment of any part. Where, therefore, a man purchased two lots at an auction, to one of which only a title could be made, this was held to be an entire contract, and that the purchaser might rescind the same, <i>Chambers v. Griffith</i> , 1 Esp. 150; <i>S. P. Gibson v. Spurrier</i> , Peake's Add. Cas. 49; <i>sed secus</i> where the lots are not so complicated with each other as to render those to

which there is no title necessary to the enjoyment of the rest, *Poole v. Skirgould*, 2 B. C. C. 118; S. C. 1 Cox, 273; but in the case of a sale of goods by auction, the contracts for different lots at different times have been held separate both at law and in fact, *James v. Shore*, 1 Stark. 426, "a complete bargain being made as to each article as soon as the auctioneer has signed his name to it," per Best, J., *Baldey v. Parker*, 2 B. & C. 37; S. C. 3 D. & Ry. 220; therefore, where several lots are knocked down to the same bidder, each of which is under 10*l.*, although the aggregate is above that sum, yet the statute in such case does not apply, and neither writing, or delivery is necessary, *Emmerson v. Heelis*, *ub. sup.*; and on the same ground it has been decided, that where each of several lots sold is under 20*l.*, no stamp was necessary upon the agreement for each lot, *Roots v. Lord Somer*, 4 B. & Ad. 77; S. C. 1 Nev. & Man. 667. As to the case of a sale by private contract, the current of opinion is to consider the contract entire, on the principle that the having the whole of the lots may be an inducement to purchase at all, *Baldey v. Parker*, recognising *Champion v. Short*, 1 Campb. 52, see further, Dig. p. ii. tit. AUCTIONS (STATUTE OF).

Auctions.

Fourthly, the payment of the auction duty will not be deemed in parts of equity to be a part performance of a contract so as to take the case out of the statute, as the revenue laws cannot be held to operate beyond their immediate purpose of protecting the revenue, and consequently not to interfere with private rights, *Buckmaster v. Larrop*, 7 Ves. 341; S. C. 13 Ves. 456.

Effect of paying the auction duty.

Agreement or Memorandum referring to Conditions of Sale, see post, CONDITIONS OF SALE.

No. CCV.

Application for an Auctioneer's Licence.

No. CCV.

Application.

Obs. For the regulations by statute and by the Board of Commissioners respecting excise licences, see Bateman, L. A. 4—10; and Appendix, 117, *et seq.*; also Dig. p. ii. tit. AUCTIONS.

I, A. B. of in the county of hereby give notice that it is my intention forthwith to commence and carry on the business

In 1877
Amendment.

if an auctioneer within or without the limits of the chief office of Excise: and I request that a licence may be granted me for that purpose: now proposing as my sureties C. D. of the one part and E. F. of the other part. Dated this day of 18 A. B.

Yr the proper Assessor (if in London)

Yr the Collector or Supervisor (if in the country)

In 1877
Amendment.

N. O. C. V. L.

Auctioneer's Bond. Variations where it is for the Country.

See As to the statutory regulations respecting such bonds, *Enclosure. vol. reg. p. 9: also Dig. p. E. in AUCTIONS.*

Chapman.

Know all Men by these Presents That I, A. B. of &c. auctioneer hereby and firmly bound to her present Maj. Q. Victoria the sum of £1000 (for the country 500L) of lawful money of G. to be paid to our said lady the Queen her heirs or successors, which payment well and truly to be made I bind myself my heirs and assigns and every of them firmly by these presents. Seal with my seal. Dated the day of in the year of

Enclosed is 10
G. 3, c. 130, re-
quiring bond in
amendment.

When by an Act of Parli passed in the nineteenth yr of late Maj. King George the Third every psn using or exercising the trade or business of an auctioneer is obliged to take out a licence for that purpose and to give security by bond to her Maj. with two or more sufficient sureties that he will within twenty-eight days (for the country "six weeks") deliver the psn appointed to receive the same an exact and partur act writing of the total amount of the money bid at each sale and of the several articles lots or parcels which shall have been there sold and the price of each and every such article and shall at the same time make payment of all such sums of money as shall be due and pay to her Maj. in pursuance and accordg to the true intent and meaning of that Act And whereas the above bounden A. B. hath been duly authorized licence under the hands and seals of (collector and supervisor to exercise the trade &c. of an auctioneer within (or "within the limits of the chief office of Excise in London And as by an Act of Parliament made in the forty-second yr of (amended by the 43 G. 3, c. 130, as to the penalty of the b

Licence.

Penalty of the
bond by 42 G.
3, c. 93; 43 G.
3, c. 130.

by town auctioneer) every such auctioneer is required at the time of receiving his licence to give security by bond with two sureties of 200*l.* (*for the country* 50*l.*) each for defaults of sales and making payments of duty as hereinafter. And whosoever C. D. of &c. shall have agreed and is to become one of such sureties and E. F. of the same place shall be bound as the obligor of the said sureties according to the form and effect of the said Act. *Now the Condition.* This obligation is such That if the said A. B. shall and do within twenty days ("six weeks" *for the country*) after each and every sale by way of auction deliver to the person appointed to receive the exact and particular account in writing of the total amount of every bid at each such sale and of the several articles &c. which shall have been there sold and the price of each and every article &c. and shall at the same time make payment of the sums of money as shall be due and payable to her Majesty in and according to the true intent of the several Acts of Parliament made and provided Then this obligation to be void and shall be and remain in full force and virtue

A. B. (L. s.)

sealed and delivered [being
publicly stamped] in the presence
of G. H.

No. CCVII.

Certificate from the Sheriff of Goods sold under an Execution to be indorsed on the Catalogue of Sale.

No. CCVII.
*Certificates,
Goods sold
under
Execution.*

This and similar certificates in other cases are required by 3, c. 56, and other Acts, to be given for the purpose of the exemption from auction duty according to the provisions of the Act, see Bateman, L. A. 83, 169, *et seq.*; also Dig. AUCTIONS.

I certify that the goods and chattels mentioned in the Catalogue were the proper goods &c. of (debtor) and were sold under and by virtue of a writ of issued out of His Majesty's Court of at against the said (debtor) for the sum of £ Dated this day of 18

(Sheriff)

No. CCVIII.
Goods imported.

No. CCVIII.

Certificate of Imported Goods.

Obs. As to the purpose of such certificate and others of a like kind, see Bateman, *ub. sup.* 83.

This is to certify that the goods specified in the annexed catalogue, to which the lots underneath described refer, were imported from in the ship being by the undersigned, and sold at the first sale thereof held at on the day of 18 for the account of the original importers, to whom the same were consigned, and by whom they were entered at the Custom House, at the port of on the day of 18 and that they had never been previously sold or parted with by us,

B. and Co. original importers.

No. CCIX.
Complaint.

No. CCIX.

Complaint before Two Justices to recover back the Auction Duty where the Sale has become void for want of a Title.

Obs. Where a title cannot be made, the vendor or auctioneer is enabled by the Auction Acts, see Dig. p. ii. tit. AUCTIONS, to recover back the auction duty on laying his complaint before the commissioners or two justices of the peace; but it is said that this provision is construed strictly, and the commissioners must be satisfied that the vendor has used every endeavour to make a title, 1 Sugd. V. & P. 10th ed. 26; 2 Burn's Just. by Chitty, 419, n. (b).

County of — } Be it remembered that on the day of
 to wit. } at in the county of A. B. of in the
 county of auctioneer in his own proper person comes before
 us (*justices*) two of her Maj.'s justices of the peace in and for
 the said county, and exhibits an information and complaint, and
 thereby informs us that on the day of now last past he
 the said A. B. put up to sale by auction for the benefit and on
 account of C. D. of &c. afd banker, a certain estate, that is to
 say, certain lands &c. situate at in the county of and
 then and there sold the same to A. F. the highest bidder for the

same, at the price or sum of £ ; and that on the day of now last past he the said A. B. paid to (*collector*) the proper collector of excise for F— collection, the auction duty thereupon, amounting to £ , and the said A. B. informs us the said justices, that the sale has been rendered void by reason that the said C. D., for whose benefit the same was sold, had no title to the same and no right to dispose thereof; and that the present complaint is laid within twelve (*a*) calendar months after sale (*or* “ within three months after the discovery of the person for whose benefit the said estate was sold having no title to the same or right to dispose thereof”) And therefore the said A. B. prayeth the judgment of us the said (*justices*) in the premises, and that we will hear and determine the said complaint, and examine witnesses upon oath, and thereupon and by other due proof relieve the sd A. B. of so much of the said duty as shall be proved to have been overpaid, as by the statute in that case made and provided is required.

No. CCIX.
Complaint.

A. B.

Exhibited before us the day
of 18
(*Justices*)

Conditions of Sale by Auction, see post, CONDITIONS OF SALE.

No. CCX.

No. CCX.
Declaration.

Auctioneer's Declaration on settling his Sales with the Excise.

Obs. As to the regulations by statute or the orders of the Board of Commissioners, see Bateman, L. A. p. 61 *et seq.*; Dig. p. ii. tit. AUCTIONS. This declaration may be made either by the auctioneer or his clerk, in all matters except where property has been bought in by or for the owner, in which latter case the auctioneer must personally make a declaration; when such property has been purchased under a written notice, see Bateman, *ub. sup.*

(*a*) For the reason of this clause, see 28 G. 3, c. 37, s. 19; Dig. p. ii. tit. Auctions.

No. CCX.
Declaration.

I do declare that sales by auction have been and were opened and begun by at the following times and places respectively, under notices (a) delivered by according to the statute in that case made and provided, viz.

And that the annexed papers do contain an exact and particular account of the total amount of the money bid at each sale by way of auction therein specified, held at the times above mentioned; and also an exact and particular account of the several articles, lots and parcels which were sold at each such sale; and the price of each and every such article, lot or parcel; and also an account of each and every article, lot and parcel contained in the catalogues of such sales which were not then and there sold.

And I do also declare that each and every estate, and all goods and effects put up to sale by way of auction, and in any of the said papers specified or purported to be exempt from duty, was and were actually sold under the respective circumstances therein stated, and was and were lawfully exempt from auction duty for the respective causes therein assigned.

And I do also declare that each and every estate, and all goods and effects put up to sale by way of auction, and in any of the said papers specified or purported to have been sold under an execution (b), was and were actually sold under the

(a) As to the notices, see *post*, NOTICES.

(b) Where an exemption from duty is to be claimed for goods damaged by fire, instead of this clause, say,

"Purported to have been sold as goods damaged by fire, were actually goods damaged by fire, and sold by order and for the benefit of the insurers, according to the certificate of the insurers hereunto annexed."

Where the exemption is claimed in respect of goods sold under any distress, say,

"Sold under any distress for rent, were goods and effects which had been actually and lawfully seized and distrained for rent under the warrant hereunto annexed, and sold by auction under such warrant for satisfying the rent therein mentioned."

Where it is the property of any bankrupt or insolvent, say,

"Purported to have been bankrupt (or 'insolvent') property and effects, was and were actually the property or effects of the bankrupt (or 'insolvent') therein mentioned, and sold for the benefit of (creditors) creditors, according to the certificate of the assignee annexed."

Where it is cattle, corn, stock and produce of land put up to sale by way of auction, and in any of the said papers specified or purported to have been farming stock sold on the land producing the same, add,

"Was and were actually cattle, corn, stock and produce of land, and were sold

satthy of the sheriff or undersheriff for the bent of crs. in exon of a judgmt or judgmts had and obtd according to the certificate hereunto annexed.

No. CCX.
Declaration.

And I do further declare, that each and every estate, and all the goods and effects put up to sale by way of auction, and in any of the said papers specified or purported to have been bought in or purchased by the owner, was and were actually bought in by the real(a) owner or owners(b) thereof, who then and there became the purchaser or purchasers thereof by means of his own bidding (or "purchased for the owner, was or were actually bought in for the real owner, &c., who then and there became the purchaser &c. thereof by means of the bidding of a person(c) on the behalf and for the use of such last-mentioned owner or owners; and that in each such case of purchase for the real owner, notice in writing, signed both by the said owner or owners, and the person intended to be the bidder [and who

by auction whilst the same continued on the land producing the same, and by and for the benefit of the owner or owners of such lands, or by their stewards or agents."

Where the goods are imported, say,

"Purported to have been sold for the importers, were actually the growth and produce of the British Colonies in America, (or 'East India goods &c.' as the case may require,) imported in the British ships or vessels therein respectively set forth (or 'from thence,' or 'from foreign parts,' as the case may require), and sold at the first sale, within twelve months next after importation; and for the account of the original importers by whom the said goods were duly entered at the custom house at the port of importation; and that neither the whole nor any part thereof had been previously sold or parted with by them; and that the certificate relating thereunto and hereunto annexed, is true according to the best of my knowledge and belief."

So any other exemption may be set forth, see Bateman, 165 *et seq.*; Dig. p. ii. tit. AUCTIONS.

(a) This part of the declaration, when required to be made, must be made by the auctioneer himself, and cannot be made by his clerk, *Bateman*, L. A. 91, L. (i).

(b) Trustees for the benefit of creditors, if in actual possession (but not otherwise), are considered as owners, so also assignees and mortgagees with power of sale, but not pawnbrokers; see *Bateman*, 89, n. (b).

(c) If the bidding be by a steward or agent, say,

"Bidding of the steward or known agent of such owner or &c. and actually employed in the management of the sale of the estate, goods or effects so bought as aforesaid, and that notice in writing, signed by such steward &c. of his the said steward &c. being about to bid for such owner &c. was in every such case as last aforesaid given to me before such bidding, and that every such notice as last aforesaid is hereunto annexed."

**No. CCX.
Declaration.**

afterwards bid for the same as aforesaid], of the latter being appointed by the former, and having agreed accordingly to bid at such sale for the use and behoof of the seller, was given to me before such last-mentioned bidding; and that every such notice is hereunto annexed.) (a)

And lastly, I do declare that, to the best of my knowledge and belief, each of the said transactions was and is fair and real, and without fraud or collusion, and that each and every of the foregoing declarations is true. As witness my hand this day of 18.

(Auctioneer or Clerk.)

Made and subscribed }
in the presence of }

No. CCXI.

*Notice,
(appointing
a Bidder.)*

No. CCXI.

*Notice of appointing a Person to bid for the Owner and his
Acceptance of the Appointment.*

Obs. By the 19 G. 3, c. 56, s. 12, the commissioners of excise are authorized to make an allowance of the duty when the property is bought in by or for the owner, provided the proper notices (b) are given. See *Bateman*, L. A. 89 *et seq.*, also Dig. p. ii. tit. AUCTIONS

Take notice, that (*intended bidder*) is appointed by (*owner*) the real owner of the estate, goods, or effects intended to be by you put up to sale by way of auction, on the day of to bid at the sale for the use and behoof of the sd (O.)

And take notice also, that the sd C. D. has agrd accdgly to bid at the sd sale for the use and behoof of the sd E. F.

Witness their hands this day of 184

(owner.)

Witness A. B.

(bidder.)

To Mr. Auctioneer.

(a) If it be necessary add,

"And I do further declare that no sale (*or if there were a sale opened, but nothing sold*, "the sale") has been or was opened or begun under the notice delivered at the Office of Excise at in pursuance of the statute in that case provided, specifying that sale by auction was to begin at the following time and place (*or* "but that no article, lot, parcel, or thing, was then and there bid for or sold.")

(b) No previous notice need be given if the bidding is made by the owner in person, *Bateman*, *ub. sup.*

No. CCXII.

No. CCXII.
Bidding by
Steward, &c.

Notice that a Steward or Agent intends to bid for the Owner.

Take notice, that (*steward*) the steward or known agent of (*owner*) of &c. owner of the estate &c. intended &c. (*see above*) [the sd (*S.*) being actually employed in the management of the sale of such este &c.] is about to bid at the sd sale for the sd (*O.*) As witness the hand(*a*) of the sd (*S.*) the day of
(*steward.*)

To Mr. Auctioneer.

No. CCXIII.

No. CCXIII.
Notice,
(Appointing
Bidder by
Steward.)

Notice of appointing by a Steward or Agent a Person to bid for the Owner.

Take notice, that (*intended bidder*) is appointed by (*S.*) the steward or known agent of (*owner*) the owner of the estate &c. intended &c. (see No. CCXI.) [the sd (*S.*) being actually employed in the management of the sale of such este &c.] to bid at the sd sale for the use and behoof of the sd (*O.*)

And take notice also, that the sd (*I. B.*) hath agrd and doth intend accdgly to bid at the sd sale for the use &c. of the sd (*O.*) As witness the hands of the sd (*S.*) and (*I. B.*) the day of

(*steward.*)

(*intended bidder.*)

Witness A. B.

To Mr. Auctioneer.

No. CCXIV.

No. CCXIV.
Of Sale.

Notice of Sale by Auction.

Take notice(*b*) that a sale by auction by me, the undersigned

(*a*) In this case it is sufficient if the notice is signed by the steward or agent only; but see the form following.

(*b*) Where nothing else is to be added, it is in practice deemed sufficient to send a copy of the catalogue or particulars, with the words "Notice of Sale for the Excise," so as the name and residence of the auctioneer be given at full length; see *Bateman*, L. A. 14, 125.

No. CCXIV. (auctioneer) auctioneer, is to begin at _____ on the
Of Sale. day of _____

If it is intended to settle in another collection add,
 And take notice also, that I intend to settle for the sd sale with
 the collector of excise at _____

(auctioneer.)

To the Collector of Excise at _____
 (Or, To Mr. _____ Officer of Excise at)

PARTICULARS OF SALE.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. <i>Description of Property.</i> 2. <i>Description must be accurate.</i> 3. <i>Description must be clear.</i> 4. <i>Construction of the Particulars.</i>
 <i>Trifling variation not material.</i>
 <i>Particular Words.</i>
 <i>"More or less."</i> | <ol style="list-style-type: none"> <i>"Clear yearly Rent."</i>
 <i>Extent of the Acre.</i> 5. <i>What deemed to be Misdescription.</i> 6. <i>Effect of Misdescription.</i>
 <i>If fraudulent, will vitiate Sale, but</i>
 <i>not if unintentional.</i>
 <i>Compensation.</i> |
|--|---|

Description of
 property.

SECT. 1. Particulars of sale are a description of the things to be sold, which may be merely a verbal statement or in writing, or there may be a plan annexed by way of explanation. It is commonly the business of the auctioneer to draw up such particulars, but considering the importance of accuracy in a document of this kind, it seems advisable, where the property is of magnitude, and the title not perfectly clear, that the matter should not be left exclusively in his hands.

Description
 must be accu-
 rate.

2. A vendor must not only be careful to guard against misdescription, but his description must be accurate; for "if a person, however unconservant in the actual situation of his estate, will give a description, he must be bound by that, whether consensat of it or not," per Lord Thurlow, *C. Calverley v. Williams*, 1 Ves. jun.; and verbal declarations by the auctioneer, by way of explanation at the time of the sale, will not be admitted, *Gunnis v. Erhart*, 1 H. Bl. 289; *Bradshaw v. Bennett*, 5 C. & P. 48; and this rule prevails in equity as at law, *Jenkinson v. Pepys*, cited 6 Ves. 330; and extends to the seller as well as to the purchaser, *Higginson v. Clowes*, 15 Ves. 515. So where the particulars of sale described the estate as held for three lives, and one dropped before the sale, and the auctioneer stated the fact, held that evidence of his statement could not be

- Particulars of Sale.* less than was stated, the purchaser will be intitled to an abatement, *Hill v. Buckley*, 17 Ves. 394; and see *Portman v. Mill*, 2 Russ. 571.
- "Clear yearly rent."* By the words "clear yearly rent," is to be understood clear of all outgoing, incumbrances, and other extraordinary charges, not such as are according to the custom of the country, as tithes, poor rates, church rates, &c. which are usual charges on the tenant.
- Extent of the acre.* Formerly acres were either customary, that is according to the measure of the country, or they were by statute; and although for the most part lands were sold according to the latter measure, *Wing v. Earle*, Cro. El. 267; *Morgan v. Tedcastle*, Poph. 55; yet where a man agreed to convey a certain number of acres of land which were known by estimations, there the acres were taken according to the estimation of the country where the land lay, *Some v. Taylor*, Cro. El. 665; but now by 5 & 6 W. 4, c. 63, all customary measures are abolished, see Dig. p. i., tit. WEIGHTS AND MEASURES.
- What deemed a misdescription.* 5. There may be a misdescription in the particulars, either by stating things differently from what they really are, or by omitting to state what ought to be known; as stating the property to be one mile from a borough town, which proved to be four miles, *Norfolk (Duke) v. Wortley*, 1 Campb. 337; or describing a public-house as "a free house," when by a covenant in the lease it appeared that the lessee was obliged to take his beer from a particular brewer, *Jones v. Edney*, 3 Campb. 285; or stating in general terms that there was a covenant in the lease against carrying on any offensive trade, instead of enumerating the particular trades contained in the covenant, *Flight v. Booth*, 1 Bing. N. C. 370; S. C. 1 Scott, 170; or omitting to state verbally, or to shew by a plan a particular right of way over a particular lot, *Dykes v. Blake*, *ub. sup.*; or omitting to mention that notice had been given by the landlord of his intention to enter unless the premises were put in repair, *Stevens v. Adamson*, 2 Stark 422; or omitting to state that a house, which formed part of the premises demised by a lease, had been pulled down before the sale, *Granger v. Worms*, 4 Campb. 83; or stating that the goods to be sold belong to one man, when in fact they belong to another, *Coppin v. Walker*, 1 Taunt. 237; *Coppin v. Craig*, *ib.* 243.
- Effect of misdescription, if fraudulent, will vitiate the sale.* 6. An error in the description of the property to be sold by auction may be such as either to vacate the contract altogether, or to make it a subject for compensation. A misdescription wilfully introduced into the particulars, whether material or not, will vitiate the sale, *Norfolk (Duke) v. Wortley*, *ub. sup.*; for if particulars of sale by auction are calculated to entrap persons, the sale is void, *Robinson*

ve, 8 C. & P. 469; but if the error be unintentional, and is usually the case in conditions of sale, a stipulation pro-
 Mullett, 3 C. & P. 115; but "equity will enforce a sale
 compensation for a slight unintentional misdescription, although
 such condition, and will not assist the seller, where there
 condition, if the misdescription be an important one," 1
 & P. 51, 10th ed. citing *Stewart v. Allerton*, 1 Mer. 26;
Double, MS. V. C. 15 June, 1832; see further as to the
 re compensation clause, *post*, CONDITIONS OF SALE.

*Particulars of
 Sale.*

but not if un-
 intentional.
 Compensation.

No. CCXV.

No. CCXV.

Particulars of Sale by Auction (a) of a Freehold Estate (b).

*Particulars of
 Sale.
 Freehold.*

several freehold pieces or parcels of land or ground,
 in the county of acres (c) containing by
 1 acres, more or less, called or known by the

in the advertisements of sales by auction, it should be stated that the
 sold by auction at the place and time fixed, "unless previously
 state contract, in which case notice of the sale will be immediately
 public."

Particulars describe the property as "free from all incumbrances," it
 and a misdescription, and will vitiate the sale, if it appear afterwards
 an annuity charged upon it, be it ever so small, *Gunnis v. Erhart*,
 45.

Let the property be charged with an annuity, say,
 property is subject to a yearly sum of £ issuing out of the same,
 to (annuitant) who is now in the year of his age, during the
 natural life."

Let there be a remainder or reversion, say,
 remainder or reversion of (reversioner) expectant upon and to take
 possession immediately after the decease of (tenant for life) of and in

Let there be an advowson, say,
 advowson, donation, or perpetual right of patronage and presentation
 to the rectory or parish and parish church of in the county of
 and all glebe lands &c. if any appurtenant to the advowson).

Let there be a rent-charge, say,
 yearly rent-charge or annual sum of £ issuing out of and charge-
 on all the lands &c. situate at in the county of and pay-
 ment (vendor) for and during the term of his natural life, under &c."
 acres were formerly distinguished as they were statute or customary
 by the 5 & 6 W. 4, c. 63, is unnecessary, see *supra*, sect 4.

No. CCXV. *Particulars of Sale.*
Freehold. several names of (*here set out the particulars*) and now in the occupation of (*specify the several tenants, if more than one, in each piece of land.*)

This property is subject to a certain mortgage in fee (*or "for term of years,"*) for securing the principal sum of £ and interest, (*or "this estate is subject to tithes," or "tithe-free," or the case may be.*)

No. CCXVI.
Leasehold.

No. CCXVI.

Particulars of Sale of a Leasehold Estate (a).

A messuage or tenement with the yard garden and outbuildings &c. situate &c. and now in the occupation of

The premises are held for the residue of a term of years subject to a rent of £ and under the common usual covenants (*b*).

AWARDS.

No. CCXVII.

No. CCXVII.

Award by a Commissioner under an Inclosure Act.

Award by a Commissioner under an Inclosure Act.

Obs. As to the nature of Awards, and for other precedents, see *ante*, ARBITRATION.

Recital.
Act of Parliament.

To all &c. see ante, No. C. I (*commissioner*) of &c. send greeting *Whas* by a certain Act of Parlt made and passed in the reign of her present Maj. intituled An Act for inclosing lands within the manor of M. in the parish of F. and county of N. *Reciting* among other things that there were within the said manor of M. open

(*a*) As to the effect of misdescription of leasehold estates, see *ante*, PARTICULARS OF SALE, Pref. sect. 5.

(*b*) A covenant in a lease to pay the land-tax and sewer rate has been held to be a common and usual covenant, and that the purchaser of a lease containing such a covenant was not at liberty to rescind the contract on the ground of misdescription, *Bennett v. Womack*, 7 B. & C. 627; S. C. 1 Man. & Ry. 644; and the same rule prevails in equity, *Barraud v. Archer*, 2 Sim. 433; S. C. 2 Ross & My. 751. As to the omission of unusual covenants, see *supra*, sect. 5, 6.

common fields commonable lds commons and waste grds *Also* reciting that I. P. Esq was lord of the sd manor and as such was intitled to the soil of the commons and waste grds *Also* reciting that the Rt Hon Lord K., W. T. Esq and ors. were owners and proprietors of divers inclosed lds tents and hereditaments in the sd manor and in respect thereof were intitled to rights common of pasture and or. rights in over and upon the sd common fields commonable lds and waste grds *Also* reciting that an Act commonly called the General Inclosure Act was passed &c. *And* after further reciting that the sd common fields commonable lds and waste grds were in their present state capable of any considerable improvement but if the same were divided and allotted unto and amongst the several persons interested therein according to their respective intents and such allotments were made the same might be greatly improved It is amongst other things enacted That I the sd (*commissioner*) should be and I was by apptd commr for dividing allotting and inclosing the sd common fields commonable lds commons and waste grds by putting the now reciting Act into execution subject to the rules orders and directions thereinafter mentd and with such directions and regulations as are contained in the sd therein recited General Act which should be applied deemed and taken as part of the now reciting Act except in such cases only as the same were thereby varied and altered *And that* (*surveyor*) of &c. should be and was by apptd surveyor for the purposes of the now reciting and the General Inclosure Acts *And that* I the sd (*commissioner*) should and might scour out deepen widen and repair all such ancient ditches &c. And also make or cause to be made such new ditches &c. in through over and across the sd open common fields &c. within the sd manor of M. with the previous consent of the proprietors of such inclosures or or. lds not thereby directed to be divided and inclosed of such dimensions and in such places as I the sd (*commissioner*) should think fit *And that* I the sd (*commissioner*) am thereby directed and required by any writing under my hand or in and by my sd award to order and determine by whom and at whose expence at what time or times and in what manner the sd ditches &c. should be made &c. *And* that for providing for and defraying the costs charges and exps of obtaining passing and extending the now reciting Act and the sd

No. CCXVII.
*Award by a
Commissioner
under an
Inclosure Act.*

Appointment of
commissioner
under the Act.

Appointment of
a surveyor.

Powers, &c. of
commissioner to
award the ex-
pences.

To sell part of
the land for
defraying ex-
pences.

No. CCXVII. Gen Act I the sd (*commissioner*) am thby required as :
Award by a Commissioner under an Inclosure Act.
 To set out portions of land for gravel pits.
 conveniently might be after the passing of the now recited Act to sell and dispose of in manner as in the sd Acts directed p^{er} p^{er}ls of the sd commons and waste grds as I sh^{all} think most proper and expedient *And that* I the sd (*commissioner*) sh^{all} and I am thby required to set out allot and award unto the surveyors of the highways of the parish afd for the being one or more plots of the sd commons and waste grds as I sh^{all} think proper as and for public stone and gravel p^{er} convenient roads to and from the same and which plot of ld so to be set out as afd sh^{all} be used in common by the surveyors of the highways of the sd parish and by the proprietors of lds and estates within the sd manor and l^{and} tenants for their own private uses and for the repairs of public and private roads including the roads to be set out pursuant of the sd reciting Act and the sd Gen Incl Act that I the sd (*commissioner*) am authorized to set out all or as much of the sd commons and waste grds as I sh^{all} think fit to award to the lord of the sd manor one sixteenth pt of the sd commons and not to exclude any allotment or allotments which would orwise be made to him in satisfaction of or for any mon of pasture upon or over the sd commons and waste grds by this Act directed to be divided and inclosed in respect to the rector; lds or tents belonging to any such lord *And* in the next pt that I the sd &c. sh^{all} set out &c. unto the sd (*rector*) one pt of the residue of the sd commons &c. in lieu of and in r^{elief} pence for the tithes of the sd commons &c. *And* that I the sd &c. sh^{all} aftwds set out and allot the residue and remr of the sd commons and waste grds thby directed to be divided and inclosed unto and amongst all and evy p^{er}sn and p^{er}sn^s bo^{dy} bodies politic and corporations collegiate having any r^{ights} rights of common or or. rights or ints in over or upon the sd or any pt thof in such pts and shares and in such mann^{er} the sd (*commissioner*) sh^{all} think fit and sh^{all} adjudge and determine to be proportionate to the value of his her or their r^{ights} rights or ints in over and upon the sd commons and waste grds *And also* that it sh^{all} be lful for me the sd (*commissioner*) to set out and allot and award any lds tents or hereds within the sd manor in lieu of or in exchange for any or. lds tents and h^{ouses} in the sd manor parish hamlet or place *Provided* that al

To make allotments, to the lord ;

to the rector ;

to commoners.

To make exchanges.

ranges be ascertained specified and decld in and by the
 rd of me the sd (*commissioner*) and made with the consent
 ie owner or owners of the lands tents or heredts which shd
 o exchanged such consent to be testified as therein mentd
 that all and evy such exchanges so to be made shd be
 l and effectual in law to all intents and purps whatsr *And*
 r by the General Act It is amongst or. things enacted That
 n shd be capable of acting as a commr in the exon of
 of the powers to be given by any act thereafter to be passed
 dividing or allotting or inclosing any lds or grds except the
 r of giving notice of the first meeting and administering
 oath thinafr directed until he (or they) shd have taken such
 which oath it shd be lful for any one of the justices of the
 e for the sd county within which the sd lds or grds shd be
 ted to administer And that the sd oath shd be annexed
 nd inrolld with the sd award *And* that such commissioner
 ie first place before he proceeded to make any of the divi-
 s or allotments directed to be made by the sd Act or any
 Act should set out and appt the public carriage roads and
 ways through and upon the lds and grds intended to be
 led allotted and inclosed and to divert turn and stop up any
 ie roads and tracks upon and over any of the sd lds and
 as he shd judge necessary subject nevss to such examination
 ie sd roads and highways as is required by the sd Act or
 and that the sd commr shd thby be empowered and re-
 ed to set out and apart such private roads bridleways foot-
 s ditches drains water-courses watering-places quarries
 ges gates &c. in over upon and through or by the sides of
 allotments to be made and set out in pursuance of such Act
 ie shd think requisite giving such notice and subject to such
 mination as in the same Acts is required And that the same
 for ever thrafr be supported and kept in repair by and at
 expe of the owners and proprietors for the time being of the
 and grds directed to be divided and inclosed in such shares
 l proportions as the commr or commrs shd in and by his or
 ir award order and direct *And whas* by the sd General
 losure Act It is amongst or. things furr enacted That as soon
 convenient might be after the division and allotment of the
 lds and grds shd be finished pursuant to the purport and

No. CCXVII.
*Award by a
 Commissioner
 under an
 Inclosure Act.*

Oath required
 by the General
 Inclosure Act.

Roads to be set
 out.

To make an
 award in
 writing.

No. CCXVII.
Award by a
Commissioner
under an
Inclosure Act.

Notices given
by a commis-
sioner.

Oath taken.

dirons thof or of any such Act the sd commr or commrs shd form draw up or cause to be formed and drawn up an award in writing which shd express the quantity of acres and roods contd in the sd lds and grds and the quantity of each and evy pt thof which shd be allotted assd and exchanged and the situations and descriptions of the same resply and shd also contain a description of the roads ways footpaths watercourses &c. set out and apptd by the sd commr or commrs resply as afd and all such or. rules orders agrts regulations dirons and determinations as the sd commr or commrs shd think necessary proper or beneficial to the pties which sd award shd be fairly engrossed or written on parchment and shd be read and exted by the sd commr or commrs in the presence of the proprietors who might be present at a general special meeting called for that purp conformably to such notice as therein is prescribed *And also* that he or they the sd commr or commrs if he or they shd think it necessary shd form or draw or cause to be formed or drawn on parchment or vellum such maps or plans of the lds or grds the better to describe the sevl new allotments or divisions and press that shd be exchanged and express the same quantity in each allotment to the respive proprietors which sd maps and plans shd be annexed to and inrolled with the sd award *And whas* I the sd (*commissioner*) named in the first herein recited Act did cause due notices to be given of the time and place of my first and evy or. meeting for the exon of the sd Acts but before I entered upon the exon of any of the powers and authties given to and invested in me in and by the sd in pt recited Acts of Parl [except as befe mentd] I did on the day of in the year of at in the sd county take and subscribe before one of her Maj.'s justices of the peace acting in the sd county the oath by the sd Gen. Incl. Act directed and hereunto annexed *And whas* I the sd (*C.*) at my first and subsequent meetings in pursuance and exercise of the power and authty given to and vested in me by the sd recited Acts and each of them did rece the claims of the proprietors and or. psns interested in the sd common fields commonable lds commons and waste grds by the sd first herein recited Act directed to be inclosed and such rights or claims as were objected to I did examine into hear and determine the same *And* I the sd (*C.*) having appointed actual

surveys and admeasurements of all the open fields commonable
 the commons and waste grds the value and quantity of which
 was necessary to ascertain for the purpe of the same Acts or
 ther of them and of the maps and plans respby made drawn
 and verified by the sd (surveyor) and subscribed before me and
 areunto also annexed accordg to the dirons as in the sd Acts
 And being now well satisfied as to the sevl and respive
 ints and boundaries of all the sd open common fields com-
 monable lds commons and waste grds so far as the same were
 easy to be ascertained for the purps of the sd Acts and having
 examined into all encroachments [except as in the first herein
 cited Act is excepted] and inclosures suggested to me to have
 been taken or made from any pt of the sd lds or grds thby di-
 rected to be divided and inclosed And having heard and exam-
 ined the proofs and allegations concerning the same and
 having duly considered the quantity and quality and situation
 of all the sd open fields commonable lds commons and waste
 lds And also the rights shares and ints of the sd sevl proprie-
 rs and or. pns interested therein respecting which he she or
 they was or were intituled And having also considered the sales
 and exchanges of the sd lds tents and heredts hnbefe mentd and
 intended to be hby effectuated with the consent and approbation
 of writing of the sevl and respive pties making the same And
 having duly and well considered as well all the public carriage
 roads and highways private roads bridle-ways footways ditches
 drains watercourses watering places quarries hedges gates stiles
 bounds fences banks bounds and boundaries and landmarks
 which I have judged necessary and requisite to be set out and
 appointed in over upon and through the sd open common fields
 commonable lds common and waste grounds directed to be in-
 closed as afd as also all and evy or. the matters circumstances
 and things referred to my award arbitration judgment and de-
 termination in and by the sd in pt recited Acts of Parlt or either
 of them *Now Know ye* That I the sd (C.) on the day of the Award.
 late of these prests in pursuance of and by virtue and in exercise
 of the sevl powers and authties to me given and in me vested in
 and by the same Acts of Parlt or either of them and of all and
 evy or. power and authty in anywise enabling me in this behalf
 make publish and declare this my final award order and arbi-

No. CCXVII.
 Award by a
 Commissioner
 under an Inclo-
 sure Act.

No. CCXVII.
Award by a
Commissioner
under an Inclo-
sure Act.

Roads.

Allotments.

To lord of ma-
nor.

To rector.

To proprietors.

Recital of an
exchange.

trament and determination touching the preses in manner and form following that is to say That the sd open fields commonable lds and waste grds by the first in pt recited Act directed to be set out divided and allotted by me as afd do contain in the whole in statute measure accordg to the sd survey delivered by the sd (*surveyor*) upon oath as afd [including the carriage roads highways bridleways footways and private roads hinafr described] acres &c. And I the sd (C.) have set out and apptd and do hby award the followg public carriage roads highway and foot roads and private roads which I have adjudged and do hby adjudge necessary to be hrafr resply reserved in over and through the sd lds directed to be inclosed as afd and of which public notice hath been given subject to appeal and examination in manner required by the sd Gen. Incl. Act that is to say (*here describe the several roads drains &c. and by whom they are to be maintained and kept up and repaired*) And I the sd (C.) in pursuance of and in furr exon of the powers and authies so vested in me by the sd in pt recited Acts as afd have set out divided allotted and do set out &c. All the residue of the sd open fields commonable lds commons and waste grds into and amongst the respive psns hnafr named their sevl and respive hrs in sevlty in the sevl and respive allotments pces and pcls of lds marked and corresponding with certain nnmbres in Roman characters on the sd plans hereunto annexed and containing by the survey and admeasurement thof by the sd surveyor as afd in statute measure the sevl and respive quantities following be the same more or less and also sevlly and resply abutted and bounded in the manner hnafr described that is to say I have assigned set out and allotted and do hby award unto the sd (*Lord of the Manor*) Lord of the Manor of &c. (*here describe the manorial allotments*) And I have assigned &c. unto the sd (*Rector*) rector of the sd parish &c. (*here describe the tithe allotments*) And lastly I have set out divided and allotted and do &c. all the residue of &c. to and amongst the sevl proprietors &c. in manner following (*here describe the several allotments to the owners*) And whas the following exchange of lds tents and heredts has been mutually agreed upon and made betn the sevl and respive pties hnafr named that is to say N. P. and K. L. have mutually agrd to make an exchange of the respive lds next

hnaft described namely of a certain close or pcl of grd called
 and containing acres &c. for a certain close or pcl
 of ancient inclosed ld situate in containing acres
 &c. And also one rood of grd to the east as the same is now
 taken out or fenced off from the residue of a certain close or
 cl of ancient inclosed grd called and the sd contracting
 ties have requested me to set out allot and award the same
 unto them in manner hnaft mentd *Now therefore Know ye*
 hat in pursuance of such agrt and request and in order that
 the sd exchange be ascertained specified and decld in this my
 ward I the sd (C.) do hby assign set out allot and award unto
 and for the sd K. L. his hrs and ass [in lieu of and exchange for
 the sd close called and the sd rood of ld hnbeft resply
 ascribed] *All that* the sd close called with the appts
 hereto belonging *And* I the sd (C.) do hby assign set out
 lot and award unto and for the sd N. P. his hrs and ass [in
 lieu of and exchange for the sd last mentd close] *All that* the
 same close called and the sd rood of ld with their respive
 appts And do order and direct that the sd N. P. his hrs and ass
 shall make and the sd K. L. shall maintain and repair a good
 and sufficient fence and ditch on the west side of the sd ex-
 changed rood of ld *In witness* whof I the sd (C.) have this
 day of in the yr of set my hand and seal.
 (Commissioner.)

No. CCXVII.
*Award by a
 Commissioner
 under an Inclo-
 sure Act.*

*Award of ex-
 changed lands.*

BANKRUPTCY.

- | | |
|---|--|
| <i>Fiat of Bankruptcy.</i> | 5. <i>Inrolment of Conveyances by Com-
missioners.</i> |
| <i>Assignment to the Assignees not ne-
cessary.</i> | 6. <i>Official Assignees.</i> |
| <i>Disposition of Bankrupt's Estate.</i> | <i>Provisional Assignees.</i> |
| <i>Conveyance of Copyholds.</i> | |

SECT. 1. By the 1 & 2 W. 4, c. 56, s. 12, it is provided, that in
 lieu of a commission of bankruptcy under the great seal, as by the
 old law, a fiat shall issue under the hand of the Lord Chancellor, or
 the Master of the Rolls, Vice-Chancellor, or any of the Masters of
 the Court of Chancery (acting under any appointment of the Lord

*Fiat of bank-
 ruptcy.*

Bankruptcy.

Chancellor for that purpose) authorizing a creditor, who applied with the requisitions of the Act, to prosecute it before a court and proper persons as the Lord Chancellor or the Justices of the Rolls, &c. may think fit to appoint. Upon this fiat being made and entered of record in the Court of Bankruptcy, any one of the commissioners may, by sect. 13, proceed thereon in and as commissioners executing a commission of bankruptcy, altered by this Act.

Assignment to the assignees not necessary.

2. By the 6 G. 4, c. 16, s. 63, the commissioners were empowered to assign the bankrupt's personal estate, and to convey his real estate to the assignees; but by the 1 & 2 W. 4, c. 56, s. 25, it is enacted that all such personal and real estate as was formerly required to be assigned and conveyed by the commissioners to the assignees shall vest in the assignees by their appointment as fully to all intents and purposes as if such estate were assigned by deed. And in case of the death or removal of any assignee, the same shall vest in a new assignee, without any deed of assignment or conveyance. The 6 G. 4, c. 16, requires the conveyance to the assignees to be registered or inrolled, the certificates of the appointment of the assignees is required, by sect. 26 of the 1 & 2 W. 4, to be inrolled.

Disposition of bankrupt's estate.

3. By the 6 G. 4, c. 16, s. 65, re-enacting the 21 Jac. 1, the commissioners were authorized to dispose of the bankrupt's real estate, in possession, reversion, or remainder, and such deed to be good against all persons whom a fine or recovery or any other legal process might cut off or debar from any remainder, reversion, or other interest; but by the 3 & 4 W. 4, c. 74, s. 56, 57, 58, the commissioners are enabled, by any disposition of the bankrupt's lands for the benefit of his creditors, to create such an estate only as the actual tenant might have done if he had not become bankrupt, *i. e.* subject to the consent or otherwise of the protector, if there be any, see *PROTECTOR AND RECOVERIES*, and 3 & 4 W. 4, c. 74, *Appendix*.

Conveyance of copyholds.

4. By sect. 68 of 6 G. 4, c. 16, commissioners are empowered to convey copyhold estates immediately to a purchaser, without a fine for the admission of the assignees is saved; and by sect. 69 enacted, that if a vendee offer a competent fine to the lord, and the lord refuses, and will not admit him, he may enter. By the 3 & 4 W. 4, c. 74, the disposition, by the commissioner, of the real estate of the bankrupt, where his estate is not equitable, is to have the same operation as a surrender, and the person to whom the disposition is made may claim to be admitted, upon paying the fines and costs.

Inrolment of conveyances by commissioners.

5. Every deed of conveyance of freeholds by commissioners shall be inrolled in his Majesty's High Court of Chancery, within six calendar months after the execution of the same.

And every deed of conveyance of copyhold must be entered within the same period on the court rolls of the manor of which they are parcel; and the consent of the protector, if there be any, must also in like manner be enrolled or entered. Bankruptcy.

6. Instead of the provisional assignees, which the 6 G. 4 empowers the commissioners to appoint, it is enacted, by sect. 22 of the 1 & 2 W. 4, that official assignees shall be appointed by the Lord Chancellor, and that in London bankruptcies each bankrupt's estate and effects shall vest in an official assignee, who, until the assignees are chosen, shall be deemed to be sole assignee. In country bankruptcies the commissioners are still empowered to appoint provisional assignees, and to assign the bankrupt's estate and effects to them, according to the old law, and see further Dig. p. ii. tit. BANKRUPT; . iii. tit. INSOLVENT DEBTOR; also Eden, B. L. 78; Stewart's Law and Pract. of the Court of Bankruptcy, 48; Archbold's Law of bankruptcy. But provisional assignments ought not to be executed, unless where an extent is apprehended, or it is intended to carry on the trade. If executed without necessity, costs will not be allowed, *ex parte M^cWilliams*, 1 Madd. 141. As to the conveyance by the commissioner or the assignees to a purchaser, see *Precedents and Observations thereon*. Official assignees.
Provisional assignees.

No. CCXVIII.

(a) *Affidavit of Debt for obtaining a Fiat.*

No. CCXVIII.

Obs. In a town bankruptcy, sworn before a Master in Chancery; in the country, before a Master Extraordinary.

Affidavit of Debt.

A. B. of &c. maketh oath that C. D. of &c. is justly and truly indebted unto him in the sum of £ (as to the amount of the petitioning creditor's debt under 5 & 6 Vict. c. 122, s. 9, see Dig. p. ii. tit. INSOLVENT DEBTORS) and upwards for goods sold and delivered by this deponent and his partner to and for the use of the sd C. D. and this deponent furr saith that the sd C. D. is become a bankrupt within the true intent and meaning of the statute made and now in force concerning bankrupts as this deponent hath been informed and verily believes

Sworn at the public office the

A. B.

day of before me

T. M. Master in Chancery.

(a) See Eden, B. L. Append. 112; Stewart, Law and Pract. of the Court of Bankruptcy.

No. CCXIX.
*Affidavit of
Debt.*

No. CCXIX.

Affidavit in a Country Bankruptcy.

A. B. of &c. maketh oath &c. and this deponent furr saith that the sd C. D. is become &c. And that the fiat of bankruptcy when obtained is intended to be prosecuted at afd or within ten miles of the same place and not within forty miles of London A. B.

Sworn at in the county of
the day of 18 before me
T. M. Master Extraordinary.

No. CCXX.
Bond.

No. CCXX.

Bond given by Petitioning Creditor.

Obs. By the last Bankrupt Act, 5 & 6 Vict. c. 122, the Lord Chancellor is empowered to dispense with this bond; see Dig. p. iii. tit. **INSOLVENT DEBTOR.**

Obligation. *Know all men* by these prests that I A. B. of &c. am held and firmly bound to the Right Hon the Ld High Chancellor of Gt Britain in the sum of (see *Obs. supra*) of good and lful money of Gt Brit to be pd to the sd Ld H. C. or his certain atty his exs ads or ass to which paymt well and truly to be made I bind myself my hrs exs and ads firmly by these prests sealed with my seal dated this day of in the yr of &c. and the year of our Lord 18

Condition. *Now the condition* of this obligation is such that if the above bounden A. B. shall prove as well before her Maj. Ct of Bankruptcy (*or, in a country bankruptcy, "before commissioners to be appointed in a fiat agst C. D. of &c."*) as upon a trial at law in case the due issuing forth of the sd fiat agst the sd Ct be tried that the sd C. D. is truly and justly indebted to the sd A. B. in the sum of £ (see *ante*, No. CCXVIII.) or upwards and is become bankrupt within the true intent and meaning of the statutes made and now in force concerning bankrupts some or one of them And if the sd A. B. shall cause the sd fiat to be prosecuted according to law then this obligation to be void or else to be in full force A. B. (Seal)

Sealed and delivered by }
the above-named A. B. } F. K.
in the presence of } G. H.

No. CCXXI.

No. CCXXI.
Petition,
*(Certificate.)**Certificate of the Solicitor of the Petitioning Creditor in the Country.*

do hereby certify that the commissioners to be named in a fiat of bankruptcy intended to be issued against the sd C. D. are not is either of them to the best of my knowledge and belief litors or a creditor of the sd intended bankrupt

D. F.

No. CCXXII.

No. CCXXII.
*For a Fiat.**The Creditor's Petition for a Fiat in Bankruptcy.*

he Right Honourable the Lord High Chancellor of Great Britain.

Sheweth

that C. D. being a trader and upon just and good causes stated unto your petitioner in the sum of £ (see *ante*, No. VIII.) did lately commit an act of bankruptcy within the t and meaning of the laws concerning bankruptcy Your ioner therefore most humbly prays that your lordship will eased to issue your fiat authorizing your petitioner as such tor as afd to prosecute his complaint in his Maj. Ct of ruptcy (*or, if in a country bankruptcy*, "before such dis- and proper persons as your lordship by such fiat may think nominate and appoint to act as commissioners in that be- '—now a district court under 5 & 6 V. c. 122, *ub. sup.*)

And your Petitioner shall &c.

No. CCXXIII.

No. CCXXIII.
*For a Fiat.**Petition for a Fiat where one is not proceeded in.*

The matter of C. D. of &c.

To the Right Honourable

against whom a fiat of

the Lord High Chancellor

of bankruptcy issued

of Great Britain

humble petition of A. B. of &c. a creditor of the sd C. D.

bankrupt

Sheweth

that on the

day of

a fiat was awarded and issued

No. CCXXIII. *Petition*
(*For a Fiat.*) agst the sd C. D. on the petition of F. K. of &c. directed to her Maj. Ct of Bkcty (*or, if in the country*, "to E. F. and G. H. esqrs therein apptd to act as commissioners," but see *ante*, No. CCXXII.)

That your petitioner hath caused the London Gazettes to be searched from the day of to the day of inclusive as by the affidavit of I. P. of &c. hereto annexed appears and doth not find that the sd C. D. hath been declared a bankrupt

That your petitioner hath made an affidavit that the sd C. D. is justly and truly indebted unto him in the sum of £ (see *ante*, No. CCXVIII.) and upwards and is ready to enter into the usual bond to your lordship to ground another fiat in bankruptcy agst the sd C. D. which your petitioner hby undertakes to prosecute with effect for the benefit of himself and the rest of the creditors of the sd C. D.

Your petitioner therefore prays that your lordship will be pleased to order the fiat so awarded and issued agst the sd C. D. to be forthwith rescinded and annulled and that a new fiat may issue agst the sd C. D. directed to her Maj. Ct of Bkcty (*or, if in the country*, "to the sd E. F. &c." see *ante*, No. CCXXII.)

And &c.

No. CCXXIV.
To enlarge Time
for Surrender.

No. CCXXIV.

Petition to enlarge the Time for the Bankrupt's Surrender.

Obs. 1. This petition is presented to the Court of Review, the chief branch of the New Court of Bankruptcy, which, by s. 2 of the New Act, has power to hear and determine all matters brought before the Lord Chancellor under the old law.

2. The order to enlarge the time for the bankrupt's surrender must be made six days before the expiration of the forty-two days. This may be done as often as the court thinks fit.

To the Court of Review

The humble petition of C. D. a bankrupt

Sheweth

That your petitioner hath been duly declared bankrupt and by summons under the hand of one of the commissioners of the

t of Banktcy and also by notice in the London Gazette of the No. CCXXIV.
 day of 18 was required to surrender himself to one *Petition*
 the commissioners of the sd Ct of Bankruptcy to be examined *(To enlarge Time*
 the day of the sd month of resply at eleven of the *for Surrender.)*
 ck in the forenoon touching the disclosure and discovery of his
 ate and effects and on the day of next your petitioner
 s required by such summons and notice to finish his exami-
 tion under the sd fiat

That your petitioner did surrender himself to the sd commis-
 sioner on the day of last and submitted to be examined
 ching the disclosure and discovery of his estate and effects
 l conformed himself to the Act of Parliament now in force
 cerning bankrupts

That your petitioner is preparing and settling his accounts in
 er to make a full and true disclosure and discovery of all his
 ate and effects but your petition finds his accounts so long
 intricate that he cannot possibly finish the same by the time
 ted by the sd commissioner's summons and notice resply for
 : purpe

Your petitioner therefore most humbly prays that
 this Hon. Court would be pleased to order that
 the time for your petitioner's surrendering him-
 self for fully disclosing and discovering his este
 and effects as the law in such cases requires be
 enlarged for the space of forty-nine days to be
 computed from the day of

And &c.

No. CCXXV.

No. CCXXV.

By Assignees.

Another Petition for the same purpose, by the Assignees.

the matter of C. D. of &c.

To the Court of Review

a bankrupt

The humble petition of A. A. of &c. and B. B. of &c. assignees
 the este and effects of the sd bankrupt

Sheweth

That the sd C. D. hath been duly adjudged a bankrupt and

No. CCXXV.
Petition
(To enlarge Time
for Surrender.)
By Assignees.

by summons under the hand of one of the commissioners of the Ct of Banktcy and also by notice &c. to surrender himself &c.

That your petitioners have been duly chosen assignees of the este and effects of the sd C. D. and find that he is in an ill state of health and a prisoner in the and is not prepared to finish his examination in the time limited for that purpose

Your petitioners therefore most humbly &c.

And &c.



No. CCXXVI.

No. CCXXVI.

Petition to
annul Fiat.

Petition to the Lord Chancellor under the 19th Section of the 1 & 2 W. 4, c. 56, to annul Fiat upon the Reversal of an Adjudication by the Court of Review.

To the Right Hon &c.

The humble petition of C. D. a bankrupt

Sheweth

That a fiat in bankruptcy bearing date the day of
 18 upon the petition of E. F. of &c. was issued
 against your petitioner directed to her Maj. Ct of Bankruptcy
 under which your petitioner having been adjudged a bankrupt
 by one of the commissioners of the Ct of Banktcy presented his
 petition to the Court of Review alleging as the fact was that
 your petitioner had not committed an act of banktcy within the
 true intent and meaning of the bankpt laws and praying that
 the sd adjudication might be reversed

That the matter of the sd petition coming on before the sd
 Ct of Review on the day of last the sd Ct
 directed an issue to be tried before the Chief Judge of the sd
 Ct upon the question whether your petitioner had so committed
 an act of bankruptcy or not

That on the day of last a verdict was found
 on such issue that your petitioner had not committed an act of
 bankruptcy within the intent and meaning of the bankrupt laws
 and the adjudication was thereupon reversed by the sd Ct of
 Review

Your petitioner therefore most humbly prays
 your lordship that the sd fiat may be rescinded

and annulled at the expence of the said E. F. and that the bond which has been entered into by him may be assigned to your petitioner and that he may pay the costs of this application or that your lordship will be pleased to make such an order in the preses as to your lordship shall seem meet

No. CCXXVI.
*Petition to
annul Fict.*

And your &c.

CONVEYANCE OF FREEHOLDS.

*t passes to the Assignees.
nces to make a good Title.
by Auction.*

4. *Assignees not to be Buyers.*
5. *Bankrupt to join in Conveyance.*

r. 1. Every species of property, whereof by possibility a profit be made or acquired by a bankrupt before his certificate, , under the old law, by virtue of the assignment and convey- o the assignees, 3 P. Wms. 132; *Hesse v. Stevenson*, 3 B. & ', 578; and passes now by virtue of their appointment, see Pref. . But a trusteeship does not pass, *Winch v. Keely*, 1 T. R. and by the 6 G. 4, c. 16, sect. 79, the Lord Chancellor is em- ed to appoint some other trustee, to whom the trust estate is to gned. Whatever interest the bankrupt has in his wife's estate to his assignees; but property given in trust for the wife's te use will not pass, *Robinson v. Taylor*, 2 B. C. C. 589; n v. *Woolloton*, 3 T. R. 618; nor a legacy or *chose in action*, has not been reduced into possession during the husband's life, rd v. *Mitford*, 9 Ves. 87. The right of nomination to a vacant astical benefice is excepted, by the 6 G. 4, c. 16, sect. 77, from eral powers and rights which pass to the assignees; and the necessary apparel is excepted, by sect. 112, from the effects pass to the assignees. By the 3 & 4 W. 4, c. 74, s. 67, the es are empowered to receive and recover the rents of all the pt's copyhold lands, until they are disposed of by the commis- ; but they can receive or recover the rents of such only of the pt's freehold estates as the commissioner may have power to

What passes to
the assignees.

- Conveyance of Freeholds.* dispose of after the bankrupt's decease, see further, Dig. p. ii. tit. BANKRUPT; and 5 & 6 Vict. c. 122, p. iii. tit. **INSOLVENT DEBTORS.**
- Assignees to make a good title.* 2. It is now held that assignees, contracting to sell, are bound like other vendors to make a good title, *White v. Foljambe*, 11 Ves. 343; but they may stipulate to sell only such title as they have, *Macdonald v. Hanson*, 12 Ves. 277.
- Sales by auction.* 3. The estates of bankrupts are usually sold by auction; but assignees are not prohibited from selling by private contract, if it be for the benefit of the creditors, *Ex parte Dunman*, 2 Rose, 66.
- Assignees not to be buyers.* 4. No assignee, either personally or through an agent, can become the purchaser of the bankrupt's estate without the consent of the creditors, *Ex parte Bennett*, 10 Ves. 395; *Ex parte Bage*, 4 Madd. 459.
- Bankrupt to join in conveyance.* 5. By the 6 G. 4, c. 16, s. 78, the Lord Chancellor may order a bankrupt to be a party, and if he refuse, he is stopped from objecting to the sale, unless he mean to dispute the validity of the fiat or commission.
6. As to the enrolment of the certificate of the appointment of assignees, see *ante*, Pref. sect. 3; and of the deed of conveyance by the commissioner, see *ante*, Pref. sect. 5.



No.
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No. CCXXVII.

Conveyance of Freeholds

Conveyance of Freeholds by Assignees of a Bankrupt to a Purchaser, in which the Bankrupt joins (variations where the Bankrupt is Tenant in Tail, under 3 & 4 W. 4, c. 74).

This Indre made &c. see ante, No. LXXXV. (a) Betn (official

(a) Where the bankrupt is tenant in tail, and the commissioner must be a party (see *ante*, BANKRUPTCY, Pref. sect. 3), say, " Betn (commissioner) Esq. the commissioner of her Maj. Ct of Bankruptcy acting under a fiat of bankruptcy issued against (bankrupt) of &c. of the first pt (official assignee) of &c. the official assignee of the estate and effects of the sd (B.) of the second pt (general assignee) of &c. assignees of the estate and effects of the sd (B.) of the third pt the sd (B.) of the fourth pt and (purchaser) of &c. of the fifth pt."

If there be a protector, who gives his consent by the same deed, he should be a party of the second part, see FINES AND RECOVERIES, and 3 & 4 W. 4, c. 74, *Appendix*.

re) the official assignee of the estate and effects of (*bank-*
f &c. a bankrupt of the first pt (*general assignees*) assignees
 estate and effects of the sd (*bankrupt*) of the second pt
 (*bankrupt*) of the third pt and (*purchaser*) of &c. of the
 part (*a*) *Whas* under and by virtue of the last will and
 ent of A. B. late of &c. deceased bearing date the &c.
 (*B.*) is seised to him and his hrs of an estate of inheritance
 on in fee simple free from incumbs *And whas* a fiat in
 ipty bearing date on or about the day of
 sued agst the sd (*B.*) and he was thereon adjudged a
 pt *And whas* the sd (*O. A.*) has been apptd by (*b*)
ssioner) Esq. the commissioner of her Maj. Ct of Bank-
 acting under the sd *fiat* to be the official assignee of the
 d effects of the sd (*B.*) and to act with the assignee or
 es to be chosen by the creditors of the sd (*B.*) *And* Sale.
 pursuant to an advertisement in the London Gazette for
 arpe inserted the sd (*G. A.*) were chosen by the major
 value of the creditors of the sd (*B.*) *And whas* the sd
) have caused the messes or tents lds and hereds hnaft
 ed to be put up to sale by public auction pursuant to
 in the London Gazette and the printed parlars of sale in
 ots on the day of last at which
 e sd (*P.*) was decl'd to be the highest bidder of the
 comprised in lot marked No. 1 in the sd printed parlar
 sum of £ and thereupon pd into the hands
 auctioneer the sum of £ by way of deposit
whas the sd (*B.*) (*c*) at the request of the sd (*A.*) agrd to
 the conveyance of the sd hereds (*d*) *Now this Indre* Testatum.
seth That for the purpe of carrying the sd recited sale

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 CCXXXVII.
 Conveyance of
 Freeholds.

Recital of
 seisin.

Where the bankrupt is tenant in tail, then recite, "*Whas* A. B. late of
 I by his last will and testament in writing duly exted and attested for the
 f estates of inheritance and bearing date on about the &c. did give and
 II his messes or tents lds and hereds unto the sd (*B.*) and the hrs male
 ody lfully begotten."

Where the commissioner is a party, say, "by the sd (*commissioner.*)"
 If there be a protector, in the case of bankrupt tenant in tail, his consent
 o be recited here. As to the form, see MORTGAGE and RELEASE.
 As to the bankrupt's joining, see sect. 6.

No. CCXXVII into effect and for and in conson of the sum of £
Convergence of
Copyrights. of lful &c. so paid at the time of the sd sale and the fu
of £ in hand well and truly pd to the sd (O.
the sd (P.) at or before the sealing and delivery of these
in full for the absolute purchase of the sd messes or te
and hereds hnafr described and intended to be hby g
and reld the rect whereof he the sd (O. A.) (a) and also
(G. A.) and (B.) do and each of them doth hby acknge
and from the same and evy pt thof do and each of the
acquit rele and discharge the sd (P.) his hrs exs ads
and evy of them for ever by these prests And also in co
the sum of 5s. of like &c. by the sd (P.) in hand pd to
of them the sd (G. A.) and (B.) at the time the sev
whereof are hby ackngd (c) They the sd (A.) with the
and consent of the sd (B.) testified by his being a pty
signing and sealing these prests *Have* and each of ther
so far and in such manner as they lfully can and may ba
sold aliened and rele and by these prests *Do* and each
Doth bargain sell alien and rele and the sd (B.) *Hath*
bargained sold aliened released and confirmed and by thes
Doth grant bargain sell alien rele and confirm unto the
(in his actual posson &c. see RELEASE) and his hrs *All t*
And the revn &c. And all the este &c. of (d) the sd (A.) a
and each and evy of them in to and out of the sd mes
Habendum. *To Have and to Hold* the sd messes or tents lds and
and all and singr or. the preses hby granted and reld o
assured or intended so to be with their and evy of th

-
- (a) Or, "also the sd (C.) (B.) and (G. A.) do &c."
(b) Or, "each of them the sd (C.) (B.) and (G. A.)."
(c) Or, "He the sd (commissioner) in further pursuance and exon
fiat and by virtue and in exercise of the powers and authties given to hi
sevl statutes now in force concerning bankrupts parlarly an Act of Pa
in the fourth yr of the reign of his Maj. King William the Fourth intitl
for the Abolition of Fines and Recoveries and for the Substitution of mo
Modes of Assurance,' *Hath* granted bargained sold ordered and dispos
conveyed and by these presents *Doth* to the full extent of the power
him as such commissioner as afd grant bargain sell order dispose of an
And they the sd (A.) and (B.) *Have* and each of them *Hath gran*
gained sold aliened released and confirmed and by these prests *Do* &c.
(d) Or, "of the sd (C.) (A.) and (B.) and each &c."

to and to the use of the sd (P.) his hrs and ass for ever (a) No.CCXXVII.
 and (b) the sd (O. A.) and (G. A.) for themselves sevlly and
 Conveyance of
 Copyholds.
 ply and for their sevl and respive hrs exs and ads and not
 Covenant that
 they have done
 no act to in-
 cumber.
 one for the or. of them or the hrs exs or ads or the acts
 ds and defts of the or. of them but each of them for himself
 y and his own hrs exs and ads and his and their own acts
 ds and defts only do covt promise and agree with and to the
 (P.) his hrs exs ads and ass that they (c) the sd (O. A.) and
 (A.) have not nor hath either of them at any time heretofore
 le done committed exted or knowingly or willingly permitted
 suffered or been party or privy or parties or privies to any
 matter or thing whatsr whby or by reason or means whereof
 sd messes or tents lds hereds and preses hnbefe granted or
 used or any of them or any pt thereof is are can or may be
 reached charged incumbered or prejudicially affected in any-
 e howsr And the sd (B.) doth hby for himself &c. covt &c.
 t for and notwithstanding any act deed matter or thing
 mstr by (d) them the sd (O. A.) and (G. A.) and (B.) or any
 Bankrupt abso-
 lutely seised.
 them made done omitted committed exted or knowingly or
 lingly suffered to the contrary (e) they the sd (B.) (O. A.)
 (G. A.) some or one of them at the time of sealing and deli-
 y of these prests are or is lfully rightfully and absolutely
 ed of or well and sufficiently intituled to the sd messes or
 ts &c. and evy pt thof with their and evy of their apts (f) for
 good perfect clear and indefeasible este of inhance in fee
 ple witht any manner of condon trust power of revocation
 limitation of any new or or. use or uses or any or. qualifica-
 a restriction matter or thing whatsr which can or may revoke
 or charge defeat abridge incumber or prejudicially affect the
 ne in any manner howsr And that for &c. they (g) the sd
 (A.) (G. A.) and (B.) or some or one of them now have or
 Good right to
 convey.

(a) As to the declaration to bar dower, see RELEASE.

(b) Or, "And the sd (C.) (O. A.) and (G. A.) for themselves &c."

(c) Or, "they the sd (C.) (O. A.) and (G. A.) have not &c."

(d) Or, "by them the sd (C.) (B.) (O. A.) and (G. A.) or any &c."

(e) Or, "they the sd (C.) (B.) (O. A.) or (G. A.) some or one of them &c."

(f) Where the bankrupt is tenant in tail, say "for a good perfect clear ab-
 solute and indefeasible estate of inheritance in fee tail general in possession
 with &c."

(g) Or, "they the sd (C.) (B.) (O. A.) or (G. A.)"

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Conveyance of
Copyholds.

For quiet en-
joyment.

Free from in-
cumbrances.

For further
assurance.

hath in themselves or himself full power and lful and absolute right and title (a) to grant bargain sell rele and confirm all and singr the sd heredts and preses with the apts in the manner afd according to the true intent and meaning of these prests And that the sd messes or tents lds heredts and preses lby granted &c. with their apts shall remain and be to the use hnbefe decld of and concerning the same and the rents issues and prfts thof and of evy pt thof shall be recd and retained and applied accordingly without any lful let suit trouble denial claim demand interruption or eviction whatsr of or by (b) them the sd (A.) and (B.) or any or either of them their or any of their hrs or any psn or psns whomsr lfully or equitably claiming or to claim by from or under or in trust for him them or any of them (c) And that free and clear and freely clearly and absolutely acquitted &c. and for ever discharged or orwise by (d) the sd (A.) and (B.) or some or one of them or their hrs exs or ads well and sufficiently saved defended kept harmless and indemnified of from and agst all and all manner of former &c. (see RELEASE) either already or hrafr to be had made exted occasioned and suffered by the sd (A.) and (B.) or any or either of them or any or. psn or psns lfully or equitably claiming or to claim by from under or in trust for them or any of them (e) And furr that they the sd (A.) and (B.) their and evy of their hrs and all and evy or. psn or psns now or hrafr having or claiming any este right title interest use trust property claim or demand whatsr either at law or in equity of in to or out of the sd messes or tents &c. or any of them or any pt thof with their apts by from under or in trust for them or any of them their or any of their hrs (f) shall from time to time and at all times &c. (see RELEASE) In witness &c. see *ante*, No. XLVI.

(a) Where the consent of the protector has been given, say "with the consent of the sd (protector) as afd."

(b) Or, "by them the sd (C.) (B.) (O. A.) (G. A.)"

(c) Where the bankrupt derives title under a will, as before recited, add "or by from or under or in trust for the sd A. B. the testator."

(d) Or, "by the sd (C.) (B.) (O. A.) or (G. A.) or some &c."

(e) Where the bankrupt derives title under a will, add "or by from or under or in trust for the sd A. B. the testator."

(f) Or, "by from or under or in trust for the sd A. B. the testator."

No. CCXXVIII.

*gain and Sale of One Fourth Part of a Copyhold Estate by
the Commissioner and Assignees of a Bankrupt.*

No.
CCXXVIII.
Conveyance of
Copyholds.

bs. As to the power of the commissioners to sell the copyhold
e of a bankrupt, and the operation of the conveyance by them,
nte, BANKRUPTCY, Pref. sect. 4. As to the entry of the deed on
court rolls, see *ante*, Pref. sect. 5; and where the bankrupt is
it in tail, see *Variations in last precedent*.

his Indre made &c. Betn (*commissioner*) Esq. the commis-
er of her Maj. Ct of Bankruptcy acting under a fiat of
ruptcy issued against (*bankrupt*) of &c. of the first pt (*offi-
assignee*) of &c. official assignee of the estate and effects of
sd (*B.*) appointed by the sd (*C.*) to act with the assignees
ie sd (*B.*) of the second pt (*general assignees*) of &c. as-
ees of the estate and effects of the sd (*B.*) duly chosen
er the sd fiat on the day of of the third pt the
B.) of the fourth pt and (*purchaser*) of &c. of the fifth pt
nessest That in pursuance of a sale by auction at in Testatum.
on the day of now last past by the order of
sd (*G. A.*) and in conson of the sum of £ pd by the sd
at the time of the sale by way of deposit and the furr sum
to the sd (*O. A.*) in hand well and truly pd at &c. the
whereof in full &c. the sd (*O. A.*) and also the sd (*C.*) (*G.*
and (*B.*) do and each and evy of them doth acknge and of
from the same and evy pt thof do and each and evy of them
acquit rele and discharge the sd (*P.*) his hrs exs &c. for
by these prests And also in conson of 5s. &c. He the sd
in exon of the sd fiat and by virtue and in exon of the sevl
utes now in force concerning bankrupts parlarly an Act of
it passed in the third and fourth yr of his Maj. King William
Fourth intituled "An Act for the Abolition" &c. (see *last pre-
ent*) *Hath* bargained sold ordered and disposed of and by
se prests to the extent of the power vested in him as such
mmissioner as afd *Doth* bargain sell order and dispose of and
sd (*O. A.*) and (*G. A.*) and (*B.*) *Have* and each and evy of
m so far as he lfully can or may *Hath* granted bargained

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CCXXVIII.
Conveyance of
Copyholds.

Habendum.

sold and confirmed unto the sd (*P.*) his hrs and ass for ever *All that* undivided fourth pt or share now or late of him the sd (*B.*) of or in *all those* &c. and of and in all houses &c. (see RELEASE) And in the este &c. now or late of him the sd (*B.*) of in to or out of that undivided fourth pt or share of the sd heredit hby bargd and sold and of and in evy pt and pcl of the same fourth pt *To Have and to Hold* the sd undivided fourth pt of and in the sd heredit and all and singr or. the preses hby bargained and sold and of and in evy pt and pcl of the same fourth pt with the apts unto and to the use of the sd (*P.*) his hrs and ass for ever (*a*) *To the intent* that the sd (*P.*) as the purchaser thereof or his hrs may be admitted tenant thof at the will of the lord of the sd manor and by and under the rents suits and services therefore due and of right accustomed to be pd done and performed And the sd (*C.*) (*O. A.*) and (*G. A.*) for themselves &c. [*covenant that they have done no act to incumber, see last precedent*] And the sd (*C.*) (*O. A.*) (*G. A.*) and (*B.*) for themselves &c. [*covenants for title, as in last precedent*] *In witness* &c. see ante, No. XLVI.

CONVEYANCE OF BANKRUPT'S LEASEHOLDS.

1. Bankrupt discharged from Rent, &c.
2. Assignees may reject the Bankrupt's Estate.
3. Assignments by Assignees.

Bankrupt discharged from rent, &c.

SECT. 1. The 49 G. 3, c. 121, s. 19, discharges the bankrupt from the payment of rent and performance of the covenants of a lease which has been accepted by the assignees, and if they decline, the bankrupt may, by 6 G. 4, c. 16, s. 75, discharge himself by delivering up the lease to the lessor.

Assignees may reject the bankrupt's estate.

2. Assignees may abandon that portion of the bankrupt's effects which the law calls a *damnosa hereditas*, an interest producing nothing to the bankrupt's estate, *per Lord Kenyon*, in *Bourdillon v. Dalton*, 1 Esp. 233. But if they shall not elect, the Lord Chancellor may, by the 6 G. 4, c. 16, s. 76, upon petition, order them to

(a) As to the declaration to bar dower, see RELEASE.

make their election; and in *Ex parte Scott*, 1 Rose, 446, the Lord Chancellor allowed the assignees ten days to consider what would be most beneficial for the creditors. If the assignees do any act manifesting an intention to adopt the property, they will be liable to the covenants in the lease, *Welch v. Myers*, 4 Campb. 368; *Thomas v. Pemberton*, 7 Taunt. 206; *Hanson v. Stevenson*, 1 B. & A. 303.

*Conveyance of
Leaseholds.*

3. Assignees may assign without the consent of the lessor, although the bankrupt is restrained by his covenant from assigning, because they are assigns at law, and not by the act of the party, *Goodbehere v. Bevan*, 3 M. & S. 353. On the same principle, assignees may discharge themselves of their liability, by assigning to another person, although he may be a pauper, or have left the country, *Taylor v. Blum*, 1 B. & P. 21; *Onslow v. Corrie*, 2 Madd. 330. For this reason it has been held, that they cannot require an indemnity from the purchaser, *Wilkins v. Fry*, 1 Mer. 244; S. C. 2 Rose, 370.

*Assignments by
assignees.*

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No. CCXXIX.
Leaseholds.

Assignment of a Leasehold by Assignees of a Bankrupt, and the Bankrupt, to a Mortgagee (by Indorsement).

This Indre made &c. see ante, No. LXXXV. Betn (official assignee) of &c. the official assignee of the estate and effects of (bankrupt) of &c. appted by the commissioner acting under a fiat of bankruptcy issued against the sd (bankrupt) on the day of of the first pt (general assignees) of &c. assignees of the &c. duly chosen at a meeting of the creditors of the sd (B.) on the day of last past of the second pt the sd (B.) of the third pt and (mortgagee) of &c. of the fourth pt Whas the sum of £ secured to the sd (mortgagee) by the within-written indre is still due and owing with int And whas at the time and date of suing for the sd fiat agst the sd (B.) he the sd (B.) was also indebted to him the sd (M.) in the sum of £ for &c. And whas the sd (M.) has called upon the sd (A.) for the principal mos and int due to him on the secty of the leasehold preses assd to him by the within-written indre And the sd (A.) have had a conference and meeting with the sd (B.) and his creditors on the steps to be taken by the sd (A.) and it has been concluded and

No. CCXXXIX.
Conveyance of
 Leaseholds.

Testatum.

Habendum.

Covenants.

agrd by the sd (B.) and his creditors of the one pt and the sd (M.) of the or. pt that an assignment and rele shall be given to the sd (M.) of the equity of redemption of the sd mortgd preses And that the same shall be a discharge of the sd mtge money And the sd (M.) doth hby agree to accept the same in discharge and full satisfaction of the principal mos and int due to him upon his sd secty And also of all right to any divds out of or upon the produce of the estate and effects of the sd (B.) for or in respect of the sd debt of £ And the sd (B.) hath agrd to join in such assnment and rele as afd *Now this Indre witnesseth* That in pursuance and performance of the sd agrt on the pt of the sd (A.) and (B.) and in conson satisfaction and discharge of the money due to the sd (M.) *And* also in conson of the sum of 10s. of &c. to each of them the sd (A.) and (B.) resply &c. pd by the sd (M.) the rect &c. They the sd (A.) *Have* and each of them *Hath* bargd sold and assd and by these prests *Do* and each of them *Doth* bargain &c. and the sd (B.) *Hath* granted bargd sold assigned remised released and confirmed and by &c. *Doth* grant &c. unto the sd (M.) *All those* the pces or pcels of ground which by the within-written indre were resply assd or orwise assured by the sd (B.) to the sd (M.) And all the este of them the sd (A.) as assignees under the sd *fiat* of bankruptcy and of the sd (B.) and (M.) resply of in to and out of the sd preses Togr with the within-written indres of lease and assnmt *To Have and to Hold* to the sd (M.) the sd pces or pcels of ground and all and singr or. the preses hby assd or intended so to be and evy pt thof with their and evy of their respive rights members and apts unto the sd (M.) his exs ads and ass henceforth for and during all the residue and remr of the sd term of yrs in and by the within-written indre of assnmt assd to the sd (M.) freed and absolutely discharged of and from the proviso or agrt for redemption or orwise But subject nevss to the paymt of the yrly rent and taxes and to the performance of the covts and agrts which under or by virtue of the within-written indre of lease or any counterpt of the same are to be pd done performed and kept by and on the pt of the lessee therein-named his exs &c. *And* the sd (A.) for themselves sevly and resply and for their sevl and respive hrs exs &c. do and each of them doth covt &c. with the

(*M.*) that they &c. [*have done no act to incumber, also cove-
nts for title, see ASSIGNMENTS (a)*] *In witness &c. see ante,*
. XLVI.

No. CCXXXIX.
*Conveyance of
Leaseholds.*

No. CCXXX.

No. CCXXX.
*Letter of
Attorney.*

*Letter of Attorney from the Assignees to empower another to
receive the Rents of a Bankrupt's Estate.*

Know all Men by these Prests That we A. B. of &c. and C. D.
cc. assignees of the este and effects of E. F. of &c. a bankrupt
we made ordained constituted and appted and by &c. *Do*
ke &c. G. H. of &c. our true and lful atty for us and in our
nes to rece from A. L. and N. D. &c. of afd all such
ts and arrears of rent which now are or shall hrafr grow
and paye from them the sd A. L., N. D. &c. resply for the
l lds messes and tents they are in posson of at afd in
sd co. of late the este of the sd E. F. or any future
ant of the sd preses or of any pt thof and upon rect thof or
any pt thof for us and in our names sufficient discharges to
e for the same but in deft of paymt thof the sd sevl lds to
er and to distrain for the sd rents and the distresses there
nd to dispose of according to law as the sd G. H. shall think
st proper for the recovery thof they the sd A. B. and C. D.
owing and hby ratifying and confirming all and whatsr the sd
H. shall lfully act and do in and about the preses by virtue
these prests *In witness &c. see ante, No. XLVI.*

No. CCXXXI.

No. CCXXXI.
*Letter of
Attorney.*

*Letter of Attorney to receive the statutable Allowance of a
Bankrupt.*

Obs. There must be an affidavit of this letter of attorney.

Know all Men by these Prests That I (*bankrupt*) of &c. *Have*
le &c. and by &c. *Do* make &c. (*attorney*) of &c. my true &c.

) As to the omission of the other covenants usually inserted in such assign-
s, see *supra*, Pref. sect. 1, 2, 3.

No. CCXXXI. for me &c. to ask demand and rece of and from the Accor
Letter of
Attorney. General of the Ct of Ch. (*or, in country bankruptcies, “*
 from the assignees of the este and effects of me the sd (B
 and evy such sum and sums of money as now is or are or
 shall hrafr become due and paye to me the sd (B.) for all
 allowance or allowances I may be intitl'd to out of the r
 duce of my sd este or effects as a certificated bankrupt
 paymt of the sd mos or any of them or any pt thof for
 in my name to sign seal and deliver all and evy such g
 sufficient rects and discharges to the sd Accountant-
 (*or, “ the sd assignees ”*) as shall and may be given an
 rally to do all and evy such furr acts and deeds for the
 exting and discharging the power and authy hby given
 and amply to all intents and purps as I might or cot
 hereby ratifying &c. see *last precedent* In witness &c. &
 No. XLVI.



No. CCXXXII.

No. CCXXXII.

Release.

*Release to be given by a Bankrupt before he can give 1
 to increase his Estate on a Trial at Law.*

Know all Men by these Prests That I (bankrupt) of
 have been duly adjudged a bankrupt *Have remised relea*
 for ever quitted claim and by &c. *Do remise &c. unto A*
 C. D. the assignees of my estate and effects their and
 their hrs exs and ads all and all manner of allowances &
 sums of money due owing or paye unto me out of my
 and effects by virtue of any Act of Parliament or orwis
 And also all the residuum or surplus of my sd este and
 which are or hrafr shall be owing or become due or pay
 as well before as after the payment or satisfaction to
 crs seeking or to seek relief under my bankptcy of their
 whole respive debt or debts and all or. int claim or dem
 I now have or hrafr may have from and out of my sd e
 effects And also all and all manner of action and action
 and causes of actions suits bills bonds writings obligator
 dues duties accts sum and sums of money judgmts exons
 controversies trespasses and dams whatsr both at law or i

or orwise howsr which the sd A. B. and C. D. as assignees of my este and effects or either of them under the sd bankptcy or orwise howsr or I ever had and which I and my hrs exs or ads shall or may hrafr have claim challenge or demand for or by reason or means of any matter cause or thing whatsr from the beginning of the world unto the day of the date of these prests
In witness &c. see ante, No. XLVI.

No. CCXXXII.
Release.

BARGAINS AND SALES.

- | | |
|--|---|
| 1. <i>Definition of a Bargain and Sale.</i> | 4. <i>Requisites of a Bargain and Sale.</i> |
| 2. <i>What passes by a Bargain and Sale.</i> | <i>Inrolment.</i> |
| 3. <i>Consideration.</i> | 5. <i>Operation.</i> |
| <i>Operative words.</i> | 6. <i>Bargains and Sales of Goods.</i> |

SECT. 1. A Bargain and Sale is defined to be a contract, in consideration of money, passing an estate in lands, tenements, and hereditaments, by deed indented and inrolled, 2 Inst. 672. The conveyance of lands by bargain and sale derives its operation partly from the doctrine of uses at common law, but more particularly from the Stat. of Uses, 27 Hen. 8, c. 10, which executes all uses that are raised. As a use is the basis of the deed, no person can make a bargain and sale who is incapable of being seised to a use. A corporation cannot bargain and sell, because no use can be raised on their seisin, 10 Rep. 24; Gilb. Us. 285. The use cannot be limited on a bargain and sale to any but the bargainee, as the effect of the bargain and sale is only to raise a use, and a use cannot be limited to a use, Dy. 155; Poph. 61. The estate of the bargainee, when executed, may be made subject to trusts; but if it be intended that a use should be executed to any other person than the vendee, some other mode of conveyance should be adopted. The conveyance by bargain and sale is now seldom used, except by commissioners or others under an Act of Parliament, or trustees under a will or otherwise, in which case the bargain and sale is considered as a common law conveyance.

Definition of
a bargain and
sale.

2. By this kind of instrument, any freeholds of inheritance, whether in possession, reversion, or remainder, may be conveyed; so likewise whatsoever is capable of being limited to a use, as advowsons, tithes, commons, rents, profits of courts, &c. But no property can be bargained and sold which is not *in esse*. So if a man convey his lands to another in fee with a right of way over other lands, the

What passes by
a bargain and
sale.

<i>Bargains and Sales.</i>	right of way does not pass, Cro. Jac. 190; 2 Co. 74; Saund. Us. 74. A man possessed of a term for years cannot bargain and sell it so that it may be executed by the statute; but a man seised of a freehold may bargain and sell it for years, Gilb. Us. 85.
Consideration	3. To raise a use upon a bargain and sale, there must be some consideration of money, Cro. Eliz. 394; 1 Co. 176; but the smallest consideration, as 5s. or even a penny, is sufficient, Sheph. Touchst. 222. The operative words in a bargain and sale are, "granted, bargained and sold." But any other words, which, upon valuable consideration, would have raised a use of lands, &c. at common law, the same amount to a bargain and sale within the Statute, as if a man covenant to stand seised to the use of another, Cro. Eliz. 161; 2 Inst. 672; 2 Saund. Us. 47.
Operative words.	
Requisites of a bargain.	4. By the 27 H. 8, c. 16, a bargain and sale must be by deed indented, and not by deed poll, nor by print or stamp; and the writing must be upon parchment, 2 Inst. 672; 3 Leon. 16. The deed must likewise be inrolled on parchment only within six lunar months from the date, Dy. 218; 2 Inst. 273, 4; Sheph. Touchst. 223. By the 5 Eliz. c. 26, bargains and sales of lands may be inrolled in the counties palatine; by the 5 Ann. c. 18, within the West Riding of York; and by the 6 Ann. c. 35, sect. 16, within the East Riding of York, and Kingston-upon-Hull. By the 10th Ann. c. 18, sect. 3, a copy of the inrolment of bargains and sales, examined with the inrolment, and signed by the proper officers, and proved upon oath to be a true copy of such inrolment, shall be of the same effect as if the bargain and sale was produced. The Statute of Inrolments extends to bargains and sales of inheritances and freeholds only, and not to bargains and sales for years, which are good without inrolment; and in consequence of this, the conveyance by lease and release came afterwards into general use, 2 Inst. 671; 8 Co. 94; Dy. 309; but as to the bargain and sale or <i>lease</i> for a year, see further, <i>post</i> , RELEASE.
Inrolment.	
Operation.	5. A bargain and sale is an innocent conveyance, and operates only on what the grantor may lawfully convey, 2 Saund. Us. 54. It does not work a discontinuance, create a forfeiture, nor destroy contingent remainders. So if tenant in tail bargains and sells land in fee, only an estate of freehold determinable on the death of the tenant passes, Co. Litt. 327; Gilb. Us. Sugd. Ed. 217.
Bargains and sales of goods.	6. There may be bargains and sales of goods and chattels as well as of lands, but they need none of the formalities prescribed by the Statute. But terms for years must, by the Statute of Frauds, be now in writing, Sheph. Touchst. Prest. Ed. 224. As to a bargain and sale for a year, see further, <i>post</i> , RELEASE, Pref. sect. 9.

No. CCXXXIII.

No.
CCXXXIII.
Freehold Lands.

*Bargain and Sale by the Deputy Remembrancer of the Court
of Exchequer of an Estate belonging to a Crown Debtor.*

Obs. 1. By the 25 G. 3, c. 35, s. 1, the Court of Exchequer may order the lands of any debtor to the crown to be sold by the Remembrancer of such court or his deputy, and the conveyance to be made by bargain and sale inrolled in such court. Court of Exchequer empowered to sell.

2. Where the crown debtor does not join in the conveyance, it is desirable that he should execute a deed of confirmation.

3. As to the stamp, see RELEASE.

Stamp.

This Indenture &c. see *ante*, No. LXXXV. Betn (*deputy remembrancer*) of &c. deputy remembrancer of the Ct of Exchequer Recitals.

of the one pt and (*purchaser*) of &c. of the or. pt *Whas* by Of sale to debtor.

adres of lease and release bearing date the and the days of

resply and made betn E. W. therein described

of the one pt and (*crown debtor*) also therein described of the

x. For the consons expssd in the sd indre of release the sd E. W.

did alien release and confirm unto the sd (*D.*) *All that &c. To*

Hold the same unto and to the use of the sd (*D.*) his hrs and

us for ever *And whas* the sd (*C. D.*) being an accountant and Extent.

debtor to her Maj. a writ of extent was on or about the

day of issued out of her Maj. Ct of Excheq against the

ste of the sd (*C. D.*) And by an inquisition taken before the

sheriff of in obedience to the sd writ on &c. It was found

that the said (*C. D.*) was on the day of and at

the time of taking this sd inquisition seised in his demesne as

of fee of the hereditis comprised in the sd recited indres of lease

and rele and the same hereditis were accordingly seised into her

Maj. hands by virtue of the sd writ of extent for the purpose of

satisfying the debt due to her Maj. from the sd (*C. D.*) *And* Order of sale.

whas by an order of the Ct of Excheq made day of

in a cause then depending betn her Maj. and the sd (*D.*) on the

sd recited writ of extent as afd it was ordered that the sd este

should be forthwith sold before the sd (*D. R.*) the deputy to her

Maj. Remembrancer of the sd Ct for which purpose the sd (*D. R.*)

was to publish advertisements in the London Gazette for the sale

of the sd estes *And whas* in pursuance of the sd order the sd Sale by public auction.

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CCXXXIII.
Freehold Lands.

Particulars of
sale.

Report of De-
puty Remem-
brancer.

Orders of con-
firmation &c.

Totum.

(D. R.) did on day of cause the sd estes to
be put up to public auction at London in three lots
before him when the sd (P.) was allowed to be the purchaser
of lot 1 And *whas* the corn-mill and machinery with apts
comprised in lot 1 in the afd parlars of sale is stated to be on
lease to E. T. for yrs from the day of
at a yrly rent of £ which sd term hath been duly
assigned to and is now vested in the sd (P.) And it is decl'd
by the sd printed parlars or condons of sale that a right of way
or passage with free liberty of ingress egress and regress from
&c. and out of the Queen's highway to lot 2 and a similar right
of way to lot 3 was to be a common and uninterrupted right of
way to these estes and it was also by the sd parlars of sale
decl'd that the stock house or shed then projecting in front of
the sd dwellinghouse lot 2 shd be curtailed and that lot 1 shd
extend no further than to a line ranging straight with the ex-
terior wall of the sd dwelling And that the purchaser of lot 1
shd remove the projection at his expe within six calr mths after
he shd be in posson And it is also by the sd parlars of sale
decl'd that lot 1 shd have a right of passage at rease hours and
in the most convenient manner to the purchasers of lot 2 and 3
to open and shut the flood-gates and sluices and to repair the
same and to remove obstructions in the mill-pond and all or
things apprtg thereto for ever And *whas* the sd (D. R.) by his
report dated the day of did approve of the sd
(P.) to be the purchaser of lot 1 as in and for the price of
£ And *whas* by an order of the sd Ct of Excheq on or
about &c. It was ordered that the sd report shd be confirmed
and that the sd (P.) was allowed to be the purchaser thof And
whas by anor. order on or about day of It was
ordered that the master's report shd be confirmed and the sd
(P.) was allowed and established purchaser thof And by anor.
order bearing date the day of It was ordered
that on paymt of the sd sum of £ by the sd (P.) to the
sd (D. R.) he the sd (D. R.) and all or. necessary pties shd
join and exte a proper conveyance of the sd premises to the
sd (P.) Now *this Indre witnesseth* that in conson of the sum
of £ of &c. to the sd (D. R.) in hand well and truly pd
by the sd (P.) at or before the sealing and delivery of these

ests the rect whereof the sd (*D. R.*) doth hby acknge and of
 d from the same doth hby acquit rele and discharge the sd
 2.) his hrs exs ads and ass for ever He the sd (*D. R.*) as Dep
 smr as afd under the directions of the Ct of Excheq and in
 rsuance of an Act of Parlt made and passed &c. and intituled
 : And by force and virtue of the power and authty to the
 Dep Remr reserved or in anywise enabling him in this behalf
 sth bargained sold and conveyed and by this deed of bargain
 d sale intended to be forthwith inrolled in the Ct of Excheq
 sth bargain &c. All that &c. And also full and free liberty to
 d for the sd (*P.*) his hrs appteas and ass and all psns claim-
 g under him or them and his and their servts and workmen
 m time to time and at all times hrafrt at reasone hours and
 the most convenient manner for the owner and occupier of
 e heredts comprised in lot 2 and 3 in the afd parlars of sale
 pass and repass in through near and along the lds and preses
 mprised in the sd lots resply for the purps afd And the revn
 : And all the este &c. and all deeds &c. (see *RELEASE*) To Habendum.
 ve and to Hold &c. Subject nevss to such right of way or
 sage with free liberty of ingress egress and regress from the
 een's highway to lot 2 and a similar right of way to lot 3
 in the sd parlars of sale are mentd In witness &c. see
 de, No. XLVI.

No.
 CCXXXIII.
 Freehold Lands.

No. CCXXXIV.

*Bargain and Sale of Copyholds by Tenant for Life under a
 Power in an Inclosure Act.*

No.
 CCXXXIV.
 Of Copyholds.

Obs. A bargain and sale of copyholds under an Act of Parliament,
 empowering a sale, is a sufficient execution of a power without a sur-
 render, 1 Prest. Abst. 202; 2 ib. 259.

This Indenture &c. see *ante*, No. XLVI. Betn (*vendor*) of &c.
 f the first pt (*commissioner*) a commr named in and apptd by
 Act of Parliament made &c. of the second pt and (*purchaser*)
 &c. of the third pt *Whas* (*testator*) late of &c. being seised to
 and his hrs according to the custom of the manor of
 the co of of sundry capital and or. customary messes
 and having surrendered the same to the uses of his will duly

Recital of sur-
 render and will.

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CCXXXIV.
Of Copyholds.

Inclosure Act.

made and published as his last will and testimt in writing and bequeathed to his wife and her ass all his real estate wheresoever situate or being *To Hold* the same during her natural life And from and after her decease He gave the same in manner therein parlarly described *And whas* at a General Court Baron held for the sd manor on the day of the sd (V.) was admitted tenant to the sevl messes of which the sd A. B. died seised *To Hold* to her and her ass during the term of her natural life *And whas* by an Act of Parlt passed &c. It was among other things enacted that all costs chas and exps of soliciting and passing the sd Act of Parlt and surveying the sd common fields thby directed to be allotted and of dividing and allotting the same and of forming and making the roads &c. which shd be set out and of preparing and inrolling the sd award and all or. costs chas and exps of the sd commissioner and of the sevl psns employed by him in the exon of the sd Act and not therin orwise directed should be borne and defrayed by all the owners and or. psns in proportion as near as might be to their respectivestes and ints *And* that the sd shares and proportions of the sd costs shd be settled and ascertained by the commr *And* it was furr enacted that it should be lful for the sd sevl owners and proprietors for the time being of all or any grds or lds being tents in tail or for life by indre or indres duly sealed and delivered and inrolled in any of her Maj. Cts of Record at Westminster and with the consent of the commr testified in writing under his hand and seal either before or after the making his award to sell such pt. or pts of any old inclosures belonging to such proprietors resply or such pt or pts of such new allotment or allotments to be assigned to them resply by virtue of this Act as shd be sufficient for the purpe of defraying the respive proportions of such costs chas and exps as afd *And* that the psn or psns to whom any such old inclosures or new allotments or any pts thereof shd be sold and conveyed and all psns claiming under them shd and might have hold possess and enjoy the same quietly and peaceably according to the terms of sale and conveyance thereof witht any let or interruption from the psn or psns to whom any inclosure or allotment for the time being shd belong or be *And furr* it was enacted that no such sale or conveyance shd be valid and effectual unless the sd (C.) shd ratify his consent

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Of Copyholds.

thereto by signing and sealing the same as pty thereto *And furr*
 that in cases where any of the sd lds might be sold in pursuance
 of the sd Act as afd it shd be lful to sell them by public auction
 or private contract *Provided* that in cases of sale by private
 contract the sd (C.) should be satisfied that the price agrd to be
 given for the same was not less than the actual value thof accord-
 ing to any estimate made and verified by oath which the sd
 commissioner was empowered to administer *And* it was thby
 so directed that when the sd (C.) shd judge necessary to direct
 any sale by public auction pursuant to the sd Act it was not
 necessary to require any such estimate as was required in cases of
 sale by private contract *And whas* the sd (V.) hath pd and
 expended divers sums of money in defraying her proportion of
 the costs chas and exps incident to and attending such inclosure
 and exon of the powers contd in the sd Act And which sevl
 sums amount in the whole to £ *And whas* a true and
 correct statement of the sevl sums so expended by the sd (V.)
 hath been exhibited and laid before the sd (C.) who hath exa-
 mined the same and hath had the sevl paymts duly vouched
 before him And he the sd (C.) hath ascertained and declrd that
 the sd sum of £ was a fair and rease claim and ought to be
 allowed And he the sd (C.) doth allow the same *And whas* Sale.
 the sd (V.) being desirous of availing herself of the provisions
 for that purpe contd in the sd Act hath applied to the sd (C.)
 for his consent to a sale and conveyance of such pt and pts of
 the sd allotments assd to the sd (V.) And in consequence of
 such application he the sd (C.) hath directed the allotments pces
 and pcls of land hnbefore mentd and described and intended hby
 to be conveyed to be sold by public auction on day of
 pursuant to public advertisement and printed condons and parlars
 at which sale the sd (P.) being the highest bidder was declared
 to be the purchaser of the sd allotment being lot 2 and 3 in the
 said parlars of sale at or for the price of £ *Now &c.* in Testatum.
 reason of &c. to the sd (V.) by the sd (P.) at &c. pd the rect
 by the direction and apptmt of the sd (C.) a commr apptd
 by the sd Act testified by his being a pty to and exting these
 ptes She the sd (V.) pursuant to the power and authty in her
 vested by the sd in pt recited Act *Hath* granted bargained sold
 and conveyed and by &c. doth grant &c. unto the sd (P.) his

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Of Copyholds.

Habendum.

hrs and ass all &c. and the revn &c. and all the este &c. To
Have and Hold the sd pieces &c. hby bargd and sold or intended
so to be with the apts unto the sd (P.) his hrs and ass for ever
And the sd (V.) for herself (*Covt that she has not incumbered*
and for furr assurance, see RELEASE.)

In witness &c. see ante, No XLVI.



No. CCXXXV.
By Trustees.

No. CCXXXV.

*Bargain and Sale of Copyholds by Trustees for Sale
under a Will.*

Obs. If a copyholder surrender to the use of his will, and direct
trustees to sell, they may do so without being admitted, and the lord
shall admit the vendee on the payment of one fine only, 2 Wils. 400.
See further as to surrenders to the use of a will, Dig. p. iii. tit. WILL.

Recital of seisin.

This Indre made &c. Betn (*trustees*) trustees of and under the
last will and testmt of A. I. late of decd of the first pt
F. H. and K. I. and A. his wife of the second pt and (*purchaser*)
of &c. of the third pt *Whas* A. I. late of decd widow was
in her lifetime and at her dece seised and possessed of or well
intitled unto the copyhold messe or tent and preses hnafr de-
scribed with their apts for an absolute este of inheritance to her
and her hrs according to the custom of the manor of D. in the
county of and did duly surrender the same preses as she shd
by her last will and testmt appt *And whas* the sd A. I. by her
last will &c. gave to the sd (T.) &c. And among or. things
directed that the sd (T.) and the survor of them shd as soon as
conveniently might be after her dece by public sale or private
contract sell and dispose of all that her copyhold messe &c. with
the garden and apts thereunto belonging and shd stand pos-
sessed of the money to be produced by such sale [after deducting
the exps thof] *In trust* to divide the same betn her two daurs
the sd F. H. widow and relict of the then late P. H. and the
sd A. I. the then and now wife of the sd K. I. their exs ads and
ass for their respive sole use and bent exclusively of their hus-
bands And the testatrix did thby direct that the rect and rects
of the sd (*trustees*) shd be a good and sufficient discharge and

good and sufficient discharges to the purchaser or purchasers of all or any pt of the sd copyhold messe or preses *And whas* the sd A. I. departed this life on or about the day of witht revoking or altering her sd will leaving the sd F. H. and A. I. her surviving and the sd (*trustees*) proved the sd will in the prerogative court of the Archbishop of Canterbury *And whas* the sd (*trustees*) in pursuance of the trust reposed in them by the sd in pt recited will of the sd A. I. decd and with the privity consent and approbation of the sd F. H. and K. I. and A. his wife testified by their being resply pties to and sevly sealing and delivering these prests have contracted and agrd with the sd (P.) for the absolute sale unto her of the sd copyhold messe or tent and preses hnaft described free from all incumbrances except as hnaft mentd at or for the price or sum of £ (a)

Now this Indre witnesseth That in pursuance of the sd agrt and so in conson of £ of &c. to the sd (*trustees*) as trustees as in hand [with the like privity consent and approbation of the sd F. H. and K. I. and A. his wife afd testified as afd] well and duly pd by the sd (P.) at or before the sealing and delivery thereof the rect of which sd sum they the sd (*trustees*) do resply pge and that the same is in full of the conson money for the absolute purchase of the sd messe or tent heredit and preses with their apts free from incumbs except as hnaft excepted and from the same sum of money and evy pt thof and all claims and demands in respect thof they the sd (*trustees*) and to the sd F. H. and K. I. and A. his wife do and each and evy of them doth acquit release exonerate and for ever discharge the sd (P.) her hrs exs ads and ass and evy of them by these presents They the sd (*trustees*) in pursuance exercise and exon of the power and trust in them reposed in and by the sd in part recited will of the sd A. I. decd and by virtue of all and evy or. power and authty vested in or given to them *Have* and each of them *Hath* so far as they can or lfully may according to the custom of the manor bargained and sold and by these presents do and each and evy of them *Doth* so far and no furr bargain &c. *All that* one copyhd or customary messe &c. being part and pd of the copyhold or customary estes of inheritance of the sd

No. CCXXXV.
By Trustees.

(a) The trustees were not admitted as tenants, see *Obs.*

No act to in-
cumber.

hrs exs and ads and not the one for the or. or or
the acts deeds or defts of the or. or ors. of them
himself and herself only and for his and her own
deeds and defts hrs exs and ads do and each and
doth hby covt &c. with the sd (P.) &c. that the
have not nor hath any or either of them at any ti
either togr or separately made done exted or know
or caused to be made done exted committed or suff
pties or pty or privies or privy to any act deed m
whatsr whby or by reason or means whof the sd
and preses hnbefe bargained and sold or mentd o
to be is are can shall or may be impeached charge
or prejudicially affected in este right title int va
whatsr And the sd F. H. for herself her hrs exs
the sd K. I. for himself his hrs exs ads and ass s
A. his wife and her hrs do and each of them doth
mise and agree with and to the sd (P.) her hrs and
the sd F. H. and K. I. and A. his wife shall and
and for ever defend unto the sd (P.) her hrs and
to the custom of the sd manor the sd messe or te
hby bargained and sold or orwise conveyed and
all and singr the respive rights members privileg
thereunto belonging agst them the sd F. H. and
his wife and their respive hrs and agst all and ev
pens whatsr lfully equitably or rightfully claiming
by from through under or in trust for him her the
either of them or by from through under or in tr

No. CCXXXVI.

No.
CCXXXVI.
To Trustees for
a Charity.

Bargain and Sale of Lands to Trustees for a Charity, to be afterwards inrolled in Chancery; with Covenant to produce Title Deeds.

This Indre made &c. see ante, No. LXXXV. Betn (vendor) of of the one pt and (trustees) trees of and for a certain charity hospital commonly called an hospital for &c. situate at R. in co. of B. of the or. pt Witnesseth that for and in conson of Testatum. a sum of £ of lful money &c. to the sd (V.) in hand pd the sd (T.) at or before the sealing and delivery of these sts the rect whof &c. see ante, No. LXXXV. he the sd (V.) th granted bargained sold aliened reld and confirmed and these prests Doth grant &c. unto the sd (T.) their hrs and for ever All those twelve acres &c. To Have and to Hold Habendum. the same twelve acres &c. hby granted bargained and sold or ant or intended so to be and evy pt thof with the appts to the (T.) and to their hrs and ass for ever but nevss to for and on such trusts uses intents and purps as the governors of the charity &c. for the time being shall from time to time direct it and appt the same And the sd (V.) for himself his hrs exs Covenants. d ads doth hby covt prom and agree to and with the sd (T.) ir hrs and ass and evy of them in manner and form following it is to say, That the sd (V.) hath not at any time htofe com- No act to in- tted done or wittingly or willingly suffered or occasioned and cumber.

sd A. his wife and her hrs Do and each of them doth covt &c. (see RELEASE) at for and notwithstanding &c. any act &c. by them the sd F. H. and K. I. [A. his wife or the sd A. I. decd or any &c. the sd (trustees) now have in themselves good right full power and lful authty to bargain and sell the sd messe in manner &c. And also that it shall and may be lful to and for the sd (P.) hrs and ass from time to time and at all times hrafr peaceably &c. witht any &c. of from or by the sd F. H. and K. I. and A. his wife their hrs or ass or y or either of them or any pen &c. claiming &c. by from under or in trust for the or any or either of them or the sd A. I. decd And that the same preses were and for ever hrafr shall remain continue and be free and clear and freely hby the sd F. H. &c. well and sufficiently &c. of from &c. incumbe made &c. y them the sd F. H. and K. I. and A. his wife or the sd A. I. decd or any &c. he for that they the sd F. H. and K. I. and A. his wife resply and their resptive in ad all and evy or. pen &c. having or lfully or equitably claiming &c. by &c. him or either of them or the sd A. I. decd shall and will &c." [covt for further release, see RELEASE.]

No.
CCXXXVI.
*To Trustees for
a Charity.*

For title.

To produce
writings.

shall not and will not commit do or wittingly or willingly suffer or occasion any act matter or thing whatsr whby or by reason or means whof the sd twelve acres &c. hnbefe mentd to be hby bargained sold and reld or any pt thof now is or hrafrt shall or may be in any wise chagd or incumbered or the este or title thof in any wise impeached *And* the sd (V.) for himself &c. doth covt &c. to and with the sd (T.) their hrs and ass and to and with evy of them by these prests in manner following that is to say That for and notwg any act matter or thing whatsr by him done or committed except as is hnafter excepted the sd (V.) now is the true and lful owner of the sd twelve acres &c. hnbefe mentd to be hby bargained and sold and of evy pt thof with the appts and is rightfully seised thof of a good pure absolute and indefeasible este of inhance in fee simple witht any manner of condon trusts contingency covt provo or limitation of use or uses or or. restraint matter or thing whatsr to alter change charge determine incumber defeat or make void the same *And* for and notwg any act &c. except as is hnafter excepted the sd (V.) hath now in himself good right &c. see *ante*, No. LXXXV. *And* that free and clear and freely and clearly and absolutely acquitted exonerated and discharged of and from all and all manner of former and or. bargains sales gifts grants feoffments devises uses jointures dowers entails leases rights titles rents arrearages of rent issues amerciaments debts duties judgments exons extents titles chas and incumbs whatsr had made done committed or wittingly or willingly suffered by the sd (V.) or by any or. psn or pens whomsr lfully or equitably claiming or to claim by from under or in trust for him except the residue of a term of yrs of and in the sd preses assd to R. S. of &c. *In trust* for the sd (V.) his hrs and ass to attend and wait upon the inhance thof and to protect the same from all mesne incumbs if any there be *And* furthermore the sd (V.) doth for himself his hrs &c. covt. &c. to and with the sd (T.) their hrs and ass and evy of them that be the sd (V.) his hrs exs ads or ass some or one of them shall and will [accidents by fire or or. inevitable accidents excepted] from time to time and at all times hrafrt at the request costs and chas of the sd (T.) their hrs or ass or some or one of them produce and shew forth or cause to be produced or shewn forth in any ct or cts of law or equity to counsel or elsewhere all and evy or

any the deeds evidences and writings which are or shall be in the custody posson or power of the sd (V.) his hrs exs ads or ass or that he or any of them can come at witht any suit in law or equity which relate to or in anywise concern the twelve acres &c. hnbefe mentd to be hby bargained and sold alone or jtly with any or. lds tents or heredts and from time to time and at all times hrafr when thereunto requested shall and will make and give unto the sd (trustees) their hrs or ass true copies of all such deeds evidences and writings as afd such copies to be had made and taken at the like costs and chas of the sd (T.) their hrs and ass And lastly that he the sd (V.) and his hrs and all and evy or. psn and psns whtser rightfully having or claiming or who shall or may rightfully have or claim any este right title or int either at law or in equity of in to or out of the sd twelve acres &c. or any pt thof by from under or in trust for him them or any of them [except the psn to whom as afd the residue of the sd term of yrs shall be assd In trust for the sd bargainees their hrs and ass and those claiming under such assee in respect of such term of yrs only] shall and will from time to time and at all times hrafr at the request and the proper costs and chas of them the sd (T.) their hrs and ass make do acknge levy suffer and exte or cause to be made &c. all and evy such furr and or. ful and reasone acts deeds conveys and assures in the law whtser for the furr better more perfectly and absolutely grantg assurg relg and conveyg unto and to the use of the sd (T.) their hrs or ass the sd twelves acres &c. hnbefe mentd to be hby bargained and sold and evy pt and pcl thof with their appts as by the sd (T.) their hrs or ass or any or either of their counsel shall be reasony devised advised or required so as in such furr assurance there be contd no furr or or. covt than agst the psn or psns his or their hrs who shall be required to make or do the same and so as the pty or pties who shall be required to make the same shall not be compelled or compellable to go or travel from his or their respive place or places of abode for the doing thof

In witness &c. see ante, No. XLVI.

No.
CCXXXVI.
To Trustees for
a Charity.

Further as-
surance.

No.
CCXXXVII.
By and to
Executors.

No. CCXXXVII.

*Bargain and Sale of Freehold and Copyhold Hereditaments
by Executors under a Will of a Mortgagor, with Release of
Dower by the Widow.*

Recital of
mortgage.

Death and will
of mortgagor
and mortgagee.
Devise to exe-
cutors in trust
to sell.

Contract of sale.

*This Indre &c. see ante, No. LXXXV. Betn (vendors) ex-
ecutors and trustees under the will of (mortgagor) decd of the
first pt (executors) executors and trustees of (mortgagee) of the
second pt (purchaser) of &c. of the third pt A. L. widow of the
sd (mortgagor) of the fourth pt (sub-purchaser) of &c. of the fifth
pt and A. B. of &c. of the sixth pt Whas by indenture bearing
date on or about the day of &c. (mortgage by demise of free-
holds and copyholds, see post, RECITALS) And whas &c. (recite
death and will of mortgagee, leaving the executors parties of the
second part) And whas &c. (recite probate of will) And whas
the sd (mortgagor) being so seised of or intituled to the freehds
afsd and being also seised or possd of the sd copyhd hereditas
for an este of inhance to him and his hrs according to the custom
of the sd manor of having duly surrendered the sd copyhd
hereditas to the uses of his will by his last will and testament in
writing duly exted and attested for the devise of lands bearing
date &c. appointed the sd (vendors) executors of his sd will and
directed them as soon as conveniently might be after his decease
to sell and dispose of all his lands &c. for the best price that
could be obtained for the same either by public auction or pri-
vate contract as they should think fit And the sd testator did
declare by his last will that the receipts of the sd (executors)
should be sufficient discharges for the purchase monies and that
the purchasers should not be obliged to see to the applicon or be-
answe for the misapplicon or nonapplicon of the same And whas
the sd (executors) in pursuance of the power given to them by
the sd will have contracted with the sd (purchaser) for the sale
to him of the sd freehold and copyhold lands hnaft mentd and
hby bargd and sold or intended so to be and the fee simple and
inhance thof subject to and charged with the sd sum of £
in manner afd and also to the payment of an annuity of £
to (annuitant) the mother of the sd (mortgagor) for her life to
an apportioned land tax of and to the delivery of three*

bushels of barley for the annual quit rents of the sd copyhd
 credits and to a fine rent of but free from all other incum-
 vances whatsr at or for the price *And whas* the principal
 sum of £ only remains due to the sd (*executors of mortgagee*)
 under and by virtue of the hnbefe recited indre all int in respect
 of having been paid and satisfied up to the day of the date of
 these prests *And* it hath been agreed that the sd sum of £
 shall be discharged out of the sd purchase money *And* that the
 term of yrs now vested in the sd (*trustees of the term*)
 securing the paymt of the sd sum of £ shall be assd and
 mdd in manner hnafter mentd *And whas* the sd fine covtd to
 be levied by the sd (*mortgagor*) and A. his wife in and by the sd
 pt recited indre was never levied and sd A. now the widow
 & relict of the sd (*mortgagor*) hath agreed to join in these
 prests and rele her dower of and in the sd freehd &c. lds &c.
Now this Indre witnesseth That in pursuance and performance
 of the sd agrt and in conson of the sum of £ of lful &c. to
 the sd (*executors of mortgagee*) by the sd (*sub-purchaser*) immly
 fe the exon of these prests at the request and by the diron of
 the sd (*executors of mortgagor*) testified by their sevly &c. and in
 full satisfaction and discharge of all money due to them the sd
 (*executors of mortgagee*) as such exs as afd which sum they the
 (*executors of mortgagee*) do hby resply acknge and of and
 in the same and evy pt thof do resply acquit rele and dis-
 charge the sd (*executors of mortgagor*) and each of them and
 wh of their hrs exs ads and ass *And also* in conson of the
 sum of £ of like lful &c. being the residue of the sd sum
 of £ to the sd (*executors of mortgagor*) at the same time paid
 by the sd (*sub-purchaser*) with the privity and consent of the sd
 (*purchaser*) testified &c. as afd the payment and rect of which
 sums of £ and £ making togr the sd sum of £ and
 the same are in full for the absolute purchase of the sd lds
 and hereditis resply bargd and sold or intended so to be
 in the fee simple and inhance thof subject and charged as afd
 & free from all or. incumbs whatsr they the sd (*executors of*
mortgagor) do hby resply acknge and of and from the same do
 resply acquit &c. the sd (*sub-purchaser*) and the sd (*purchaser*)
 and each of them and each of their hrs &c. *And also* in
 conson of the sum of £ of like lful &c. to the sd (*purchaser*)

No.
 CCXXXVII.
 By and to
 Executors.

Agreement to
 release dower.

Testatum as to
 the freeholds.

No.
CCXXXVII.
By and to
Executors.

Habendum.

at the same time pd by the sd (*sub-purchaser*) the rect of which sum of £ he the sd (*purchaser*) doth hby acknge and of and from the same and also of and from the sd sums of £ and of £ so pd by the sd (*sub-purchaser*) as afd doth hby &c. They the sd (*exs of mtgor*) pursuant to and by force and virtue and in exercise and exon of the power or authty given to and vested in them in and by the sd recited will of the sd (*mortgogor*) decd and of evy or. power and authty in any wise them or either of them enabling in this behalf and at the request and by the diron of the sd (*purchaser*) testified &c. *Have* and each of them *Hath* bargd sold aliened reld limited and apptd and by these prests *Do* and each of them *Doth* bargain &c. and they the sd (*executors of mortgagee*) for the purpe of surrendg and extinguishing the sd term of yrs so vested in them as afd and at the request and by the diron of the sd (*exs of mtgor*) testified &c. *Have* &c. assd and also surrendd and reld and by &c. *Do* &c. *And* the sd (*widow*) for the purpe of relg and extinguishg all her right and title of dower and thirds and or. right and int of her the sd (*widow*) of and in the sd lds &c. and in conson of 10s. of like lful &c. the rect &c. *Hath* reld &c. *All* right title &c. of in and *All those* &c. but subject nevss as to the sd messe &c. called H. to the paymt to the sd (*annuitant*) mother &c. of one annty or yrly rent charge of £ during her life and to the usual powers and remedies for recovering and enforcing the payment of the same which sd annty or &c. and the remedies &c. was resply given or limited to the sd (*annuitant*) by a certain ind bearing &c. and purporting to be a settlement made previous to the marre of D. the elder and M. his wife then M. H. spinster And also subject as to the sd lds &c. (*here set out the several incumbrances before mentioned*) And of and in all outhouses &c. And all the este &c. *To Have and to Hold* the sd freehold parts of the sd lds &c. hby reld or intended so to be and all and singr or. the preses hnbefe described or mentd and evy pt and pcl of the same with their and evy of their rights members and appts [subject nevss as afd] unto the sd (*sub-purchaser*) his he and ass for ever *To the Use* of such psn or psns for such este or estes int or ints upon such trusts and for such ends intents and purps and with under and subject to such powers provos condons limitons declons and agrts as the sd (*sub-purchaser*) at any

or times and from time to time by any deed or deeds to be
 ed and delivd by him in the presence of two or more credible
 esses and attested by the same witnesses shall direct limit
 ppt *And* in deft of such diron &c. *And* in the mean time
 until the same shall take effect and from time to time sub-
 to such uses estes trusts chas and ints as shall have been
 cted limited or appted by the sd (*sub-purchaser*) *To the Use*
 he sd (*sub-purchaser*) his hrs and ass for and during the
 n of his natural life and from and after the determination of
 t este by any means *To the Use* of the sd A. B. his hrs and
 during the natural life of the sd (*sub-purchaser*) *Upon Trust*
 him his hrs and ass *And* from and after the determinon of
 este hby limited in use to the sd A. B. his hrs and ass for
 life of the sd (*sub-purchaser*) *Then to the Use* of the sd (*sub-*
purchaser) his hrs and ass for ever and to for and upon no or.
 trust intent or purpe whatsr *And this Indre furr witnesseth*
 at in pursuance and furr performance of the sd recited agrt
 d for the consons hnbeffe expssd and also in conson of 10s. of
 eful &c. to each of them the sd (*exs of mtgor*) pd by the sd
 b-purchaser) immly befe the exon of these prests the rect of
 ich is hby ackngd they the sd (*exs*) at the like request and by
 like diron of the sd (*purchaser*) testified as afd *Have* and
 h of them *Hath* bargd and sold and *Do* &c. bargain &c. unto
 sd (*sub-purchaser*) his hrs and ass *All* such and so many
 such pt or pts of the sd lds &c. as is or are of copyhd or
 lomary tenure and holden of the sd manor of and by
 y of Court-roll or orwise and evy pt and pcl of the same
 h their and evy of their rights members and appts *And* the
 a and revns &c. *And* all the este &c. (see *post*, RELEASES)
Have &c. the sd lds or pts of lands &c. hby bargained and
 d or intended so to be and all and singr or. the preses hnbeffe
 ntd and evy pt and pcl of the same with their and evy of
 ir rights members and appts unto and to the use of the sd
 b-purchaser) his hrs and ass for ever at the will of the lord
 "lady") of the sd manor according to the custom of the
 ne and by and under the rents suits and services therefore
 e and of right accustomed to be pd and performd *And* each
 them the sd (*exs of mtgor*) so far as respects his own acts and
 eds only and not furr or orwise doth separately for himself

No.
 CCXXXVII.
 By and to
 Executors.

Further testa-
 tatum as to the
 copyholds.

Habendum.

No.
CCXXXVII.
By and to
Executors.

Covenant that
they have done
no act to in-
cumber.

and for his hrs exs and ads covt &c. (*that he hath done no act to incumber*, And the sd (*purchaser*) for himself &c. and the sd (*exs of mtgee and trustees of term*) each for himself &c. and the sd (*widow*) for herself doth covt &c. (*that they have done no act to incumber*, see No. CCXXXV.)

No.
CCXXXVIII.
Of Debt and
Securities.

No. CCXXXVIII.

Bargain and Sale and Assignment of a Debt and the Securities for Payment of the same.

Recitals.

Contract for
purchase of
debt.

Acceptance of
bills by pur-
chaser.

Dates and times
of payment.

This Indre &c. see ante, No. LXXXV. Betw (trustees) of &c. trustees of the effects of an insolvent of the first pt (purchaser) of &c. of the second pt and A. B. of &c. and C. D. of &c. trustees in behalf of the sd (P.) of the third pt *Whas (recite the mortgage whereby debt is secured, then the assignment from insolvent to trustees for the benefit of creditors)* *And whas the sd (T.) have contracted with the sd (P.) for the absolute sale to him of the sd debt or sum of £ be the amount thof more or less or disputed or admitted and of all secies for the same at or for the price or sum of £ to be pd by seven annual instalments at the rate of £ per ann. yrlly and evy yr until the whole thof shall be fully pd and satisfied the first payment to be made on the day of now next ensuing Togr with int to become due and paye in respect of the sd principal sum of £ and the unpd pt thof from time to time such int to be paid at the respive times of the payg of the sd respive instalments of the sd principal sum of £ to be secured by sevl bills of exchange to be drawn and accepted as next is hnafttr mentd and also by a conveye of the sd heredts and preses unto the sd A. B. and C. D. Upon the trusts hnafttr decld And whas in pt performance of the sd recited contract or agrt the sd (P.) hath accepted seven bills of exchange all bearing even date with these preses and drawn by the sd (T.) or by one of them on behalf of himself and the ors of them as such trustees as afd and made paye to their own order for the sevl sums and at the respive times follg (that is to say) One of the sd bills being for the sum of £*

aye on the day of being in satisfaction of
 m of £ pt of the purchase money of £
 ll int due on the whole of the sd purchase money up to
 day of One or. bill being for the sum of
 and paye on the day of being in satisfaction
 sum of £ or. pt of the sd purchase money and
 int on the unpd pt thof up to that time One or. of the sd
 eing for the sum of £ and paye on the
 being in satisfaction of the furr sum of £
 of the sd purchase money and of all int on the unpd pt
 o to that time One or. of the bills &c. (*here recite in like*
three other bills of exchange) And the seventh and last of
 bills being for the furr sum of £ and paye on
 day of being the residue and in full satis-
 . of the sd purchase money and of all int for such residue
 hat time And which sd sevl bills of exchange have on
 y of the date of these prests been delivd and accepted as
 to the sd (T.) as they do hby respby acknge *Now this*
witnesseth That in conson of such acceptance and delivery
 sd sevl bills of exchange by the sd (P.) as hnbefe is
 and also in conson of 10s. of &c. to each and evy of them
 (T.) pd by the sd A. B. and C. D. the rect &c. They the
) accg to their respive rights &c. with the privity and
 t of the sd (P.) testified &c. *Have* and each of them
 bargained sold aliened and reld and also assd and by &c.
 d each of them *Doth* by &c. bargain &c. unto A. B. and
 their hrs exs ads and ass *All* &c. the plantations &c. and
 este &c. *To Have and to Hold* all such pt and pts of the
 ntations &c. and preses hnbefe described as is or are of
 tenure with their and evy of their appts unto the sd A. B.
 . D. their hrs and ass *To the Use* of the sd A. B. and
 their hrs and ass for ever *And to Have and to Hold* all
 t and pts of the sd plantations &c. as is or are of freehd
 with their and evy of their appts unto the sd A. B. and
 heir hrs &c. *To the Use* of the sd A. B. and C. D. their hrs
 s for ever *And to Have and to Hold* all such and so many
 ch pt or pts of the sd plantations &c. as is or are persl este
 he nature of psl este unto the sd A. B. and C. D. their
 s and ass from thenceforth absolutely but nevss as to all
 agr the plantations hercdts and preses subject to such

No.
 CCXXXVIII.
 Of Debt and
 Securities.

Delivery of bills
 to trustees.

Testatum.

Habendum.

No.
CCXXXVIII.
*Of Debt and
Securities.*

Further tes-
tatum.
Assignment of
debt.

Habendum.

Power of at-
torney.

Declaration of
trusts.

right and bent of redemption in equity as the same are now subject or liable to under or by virtue of the provo or agrt for redemption contd in the sd indre hnbeft first recited *And this Indre furr witnesseth* That in pursuance of the sd agrt and for the consons afd and of 10s. to each and evy of them the sd sevl pns pties hto of the first pt also at the same time pd by the sd A. B. and C. D. the rect &c. They the sd (*trustees*) *Have* and each and evy of them *Hath* bargd sold assd transferred and set over *And* &c. by &c. *Doth* barg &c. unto the sd A. B. and C. D. their exs ads and ass *All that* the sd debt or sum of £ be the amount thof more or less and all bonds covts agrts and or. secties given and entered into by the sd (*insolvent*) for payment of the same and the full bent and advantage thof *And all* the right &c. of the sd sevl pns pties hto of the first pt *To Have Hold* rece take and enjoy the sd debt or sum of £ and int and all or. the preses hby assd or intended so to be and evy pt of the same and the full bent and advantage thof unto the sd A. B. and C. D. their exs ads and ass from henceforth as their own mos and effects absolutely and with full power and authty to and for the sd A. B. and C. D. and the survor of them his exs &c. to use the names and act as the atty or atties of the sd pties hto of the first pt or any or either of them their or any of their exs ads or ass or of the sd (*insolvent*) his exs ads or ass in recovg recvg and compelling paymt of the sd principal mos and int and preses hby assd or intended so to be and in enforcing the bent of the judgmts and or. secties for the same respby in such manner as they shall think fit witht any obligon by or on the pt of any psn or psns payg all or any pt of the sd principal mos and int to see to the applicon thof or be answbe or accble for the misapplicon or nonapplicon of the same or any pt thof but nevss upon the trusts and for the ends intents and purps hnaft expssd and decld of or concerning the same *And it is* hby agrd and decld that the sd A. B. and C. D. their hrs exs ads and ass shall stand and be seised and possd of the sd plantations hereds mos secties and pres respby hby reld and assd or intended so to be *Upon Trust* for the furr better and more effectually securing to the sd (*trustees*) their exs ads and ass the paymt of the sd sum of £ and the int thof by the instalments and on the days or times and in manner hnbeft

and all costs chas and expences to be occasioned by the
 npayment thof or any pt of the same And for that purpe
 on furr trust that they the sd A. B. and C. D. or the survor
 them his exs ads and ass do and shall at any time or times
 after deft shall be made in paymt of all or any pt of the
 sum of £ or the int thof at the respive times at which

same shall become due and paye as afd when he or they
 ll be thrunto in writing by the sd (*trustees*) or the survors or
 vor of them his exs ads and ass requested or at any time or
 es when he or they shall be so requested by the sd (*purchaser*)
 exs ads or ass call in and by all lful ways and means compel
 enforce the paymt of the sd principal mos and int hby assd
 ntended so to be or such pt or pts thof as shall then remain
 d And do and shall by with and out of the money so to be
 ten in and recd or as the case shall require by with and out
 the money which shall be voluntarily pd to him or them by
 sd (*insolvent*) his hrs exs ads or ass in full or in pt satisfac-
 of the secties hby assd or intended so to be In the first place
 huct and retain to and for himself and themselves all costs
 s and exps of and attending or relating to the exon of the
 sts hby decld And in the next place pay to the sd (*trustees*)
 the survors &c. not only the sum or sums of money or in-
 lments in the payment whof the sd (*purchaser*) his exs ads
 ass shall make deft at the time or respive times hnbefe mentd
 also all such and so many of the sd instalments of the sd
 n of £ as shall then remain unpd although and
 twthstg the bills so accepted by the sd (*purchaser*) as afd
 ll not then have become due and also all int which shall
 then due in respect of all or any pt of the sd sum of £

d all costs chas and exps to be occasioned by the nonpay-
 nt of the same the sd A. B. and C. D. or the survor of them
 exs ads or ass causing the sd bills resply when and as the
 ne resply shall be pd to be given up to him or them And
 mly after the same shall be so given up delivering the same
 the sd (*purchaser*) his exs ads or ass to be cancelled And
 tly pay the residue or surplus if any of the money to be recd
 afd and which shall not be applied for the purps afd unto
 e sd (*purchaser*) his exs &c. for his and their own use and
 nt And it is hby furr decld and agrd that the sd A. B. and

No.
 CCXXXVIII.
 Of Debt and
 Securities.

To deduct costs
 in execution of
 trusts.

To pay instal-
 ments in case
 of default.

To pay residue
 to purchaser.

No.
CCXXXVIII.
*Of Debt and
Securities.*

C. D. their hrs exs ads and ass shall permit and suffer the sd (*purchaser*) his exs ads and ass to rece and take for his and their own use the int income and annual produce of the sd mos secties and preses until deft shall be made in paymt of all or any pt of any or either of the sd instalments of the sd sum of £ and the int thof at or on the days or times and in manner so as afd appted for the paymt of the same *And also* that after paymt by the sd (*purchaser*) his exs ads or ass of the sd sum of £ and the int thof and such costs &c. if any as afd the said A. B. and C. D. their exs ads and ass shall on the request and at the expence of the sd (*purchaser*) his exs ads or ass rele and assign the sd mos secties and preses or such pt and pts of the same as shall then remain undisposed of unto and to the use of the sd (*purchaser*) his exs ads and ass or as he or they shall direct *And it is hby furr decld &c. (that the receipts of A. B. and C. D. shall be sufficient discharges, also if necessary a clause of indemnity to A. B. and C. D.)*

In witness &c. see ante, No. XLVI.

BARGAINS AND SALES OF TIMBER.

- | | |
|--|---|
| 1. <i>Liberty to cut and carry away.</i> | 3. <i>Sale of timber by tenant in tail.</i> |
| 2. <i>Timber personal estate or otherwise.</i> | 4. <i>Inrolment of bargain and sale.</i> |
| | 5. <i>Stamp.</i> |

Liberty to cut
and carry away.

SECT. 1. Although on a sale of trees the liberty to cut and carry them away is implied by law, yet it is prudent that the intention of the parties should be expressly declared as to the extent of the power to be granted to the purchaser.

Timber personal
estate or other-
wise.

2. If the vendor of timber, who is owner of the estate, do not intend that the produce of the sale should go to his personal representatives, a declaration to that effect must be inserted in the bargain and sale, otherwise it has been held, that all timber which is agreed to be sold, and is cut after the vendor's death, will be part of his personal estate, Sugd. V. & P. 178, 8th edit.; 7 Ves. 437.

Sale of timber
by tenant in
tail.

3. A tenant in tail cannot charge the estate after his death; if, therefore, he agree for the sale of trees growing on the inheritance, and die before they are severed, the vendee will not be permitted to fell one tree, but the heir shall have all the trees that are not severed, as part of the inheritance, Plowd. 259; Perk. sect. 58; 11 Co. 50;

Poph. 194. Some provision, therefore, for the death of the tenant in all may be necessary in a contract for the sale of the growing timber by him. *Of Timber.*

4. A bargain and sale of timber need not be inrolled, unless it be conveyed with the freehold lands, 11 Co. 52. Inrolment of bargain and sale.

5. As to the stamp, see RELEASE. Stamp.

—◆—
No. CCXXXIX.

Bargain and Sale of Timber.

No.
CCXXXIX.
Of Timber.

This Indre &c. see *ante*, No. LXXXV. Betn (*vendor*) of &c. *Testatum.*
f the one pt and (*purchaser*) of the other *Witnesseth* That in
onson of the sum of £ of &c. to the sd (*V.*) in hand &c. pd
y the sd (*P.*) at &c. the rect whof &c. He the sd (*V.*) *Hath*
ranted bargained and sold and by &c. *Doth* grant unto the sd
P.) his exs ads or ass *All* and singr the trees of oak ash birch
ycamore and or. trees as they are set out and marked for sale
standing and growing in the places as hnaft^r mentd (*parcels*)
logr with full (*a*) liberty power and authority for the sd (*P.*) his *Liberty to cut*
servants agents and workmen from the day of until the *down, &c.*
day of at all rease times to fell cut down grub up saw
und work up the sd trees and wood *And also* to lay and place
he bark of the oak trees in convenient places for drying And
o have free ingress and egress with horses waggons carts and
arriages to enter into and upon the sd premises for the purpose
f taking and carrying away the sd trees and wood with the bark
of the oaks *And also* to dig and make saw-pits in convenient
places in the sd grds and to cut turf and get such sods and earth
as may be necessary for working and converting the sd wood into
charcoal doing as little damage or spoil thereby as may be and
keeping in or near such parts of the sd preses as shall be marked
out by the sd (*V.*) or his steward or agent *To Have and to* *Habendum.*
Hold the sd timber and all and singr or. the preses hby bar-
gained and sold or intended so to be with their apts unto the sd
(*P.*) his exs ads and ass absolutely to and for his and their pro-
per use and bent and as his and their own goods and chattels
And the sd (*V.*) doth for himself his hrs &c. hby covt &c. with *Covenants from*
vendor.

(a) As to this clause, see sect. 1.

No.
CCXXXIX.
Of Timber.

Good right to
sell.

For quiet en-
joyment.

Covenants from
purchaser.

To clear away
timber, &c.

Fill up saw-
pits, &c.

and to the sd (P.) his exs &c. that he the sd (V.) at the time of sealing and delivery of these prests hath in himself good right full power and lful and absolute authty to grant bargain and sell the sd timber and or. trees hby bargd and sold or intended so to be *And* that he the sd (P.) his exs ads and ass from time to time and at all times hrafr within the space of mths next after the date of these prests shall and lfully may have hold take rece and enjoy all and singr the timber and or. trees and preses hby granted bargd and sold or intended so to be with their and evy of their apts and fell hew and carry away the same witht any manner of hinderance interruption claim or demand whatsr of from or by him the sd (V.) his hrs exs ads or ass or any psn or psns claiming by from through under or in trust for him or them *And* the sd (P.) for himself his hrs &c. doth hby covt &c. with the sd (V.) that he shall and will within the space of mths from the date of these prests fell hew and cut down the sd oak ash and other trees and draw and take them away with the boughs lops tops and bark thof *And* shall and will stock up around the body of the tree at the distance of at least feet all the roots belonging to the sd trees for the purpose of clearing the ground *And also* shall and will at his or their own costs and chas fill up all such saw-pits as shall for the purps afd have been made by him or them *And* also mend and repair all the hedges and fences in and about the sd lds in all such places as shall be broken or otherwise damaged or destroyed in felling hewing or carrying away the sd timber (a). *In witness* &c. see *ante*, No. XLVI.

Bargains and Sales of Goods.

Obs. 1. By the 29 Car. 2, c. 3, s. 17, no contract for the sale of any goods, wares, and merchandizes, for the price of 10*l.* sterling or up-

(a) If the vendor be tenant in tail, see *supra*, sect. 2, and if it be so agreed, add, "And it is hereby further agrd and decld by and betn the pties hereto that in case the sd (V.) shall happen to die before the day of next ensuing and the sd (P.) shall be prevented from felling and severing the sd trees Then and in such case the exs or ads of the sd (V.) shall pay or allow unto the sd (P.) his exs ads or ass the value of such or so many of the sd trees as shall then remain unfelled and unsevered after the rate at which the same are hereby sold."

ards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment; or that some writing or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents lawfully thereunto authorized; as to the construction of this section, see Dig. p. ii. tit. FRAUDS.

Of Goods.

2. A bargain and sale of goods, as a separate deed, is commonly called a Bill of Sale (see *Bill of Sale*); but a bargain and sale or assignment of fixtures is frequently inserted in leases, or the assignments of leases, see *Index to Precedents*.

BEQUESTS,

See *post*, WILLS.

BILLS.

BILL OF BOTTOMRY,

See *post*, SHIPPING.

BILL OF CREDIT,

See *post*, LETTERS.

BILLS OF EXCHANGE, PROMISSORY NOTES AND CHECKS.

I. BILLS OF EXCHANGE.

- | | |
|---|---|
| <ul style="list-style-type: none"> 1. <i>Definition.</i> 2. <i>Bills of Exchange are simple Contracts.</i> 3. <i>Distinguished from simple Contracts, in what.</i> 4. <i>Effect of altering a Bill of Exchange.</i> 5. <i>Consideration.</i> 6. <i>Negotiability.</i> | <ul style="list-style-type: none"> 7. <i>Particular Qualities of Bills of Exchange.</i> 8. I. PARTIES TO THE CONTRACT. 9. <i>Division of the Subject.</i> 10. <i>1. Who may be Parties to the Contract.</i> 11. <i>6. Persons not Merchants.</i> 12. <i>7. Corporations.</i> |
|---|---|

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- 9. *Femes covert.*
- 10. *Agents.*
- 11. *Partners.*
Spiritual Persons.
- 12. *Executors.*

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- 13. *Who usually Parties.*
- 14. *Three Persons Parties.*
- 15. *Acceptor, &c. for Honour.*

3. *Rights and Liabilities of Parties.*

- 16. *Rights and Liabilities in general.*
- 17. *Drawer.*
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- 17. *Liability of Drawer to Holder.*
Presentment and Notice to Drawer.
- 18. *Effect of Indulgence as to a Drawer.*
- 19. *Interest payable by Drawer.*
- 20. *Liability of Indorser.*
- 21. *Notice to Indorser.*
- 22. *Effect of Indulgence to Indorser.*
- 23. *Liability of Acceptor.*
- 24. *Acceptor may revoke his Acceptance.*
- 25. *Not intituled to Presentment.*
Or Notice of Non-payment.
- 26. *Interest payable by Acceptor.*
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- 29. *In what Particulars.*
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- 30. *Dating the Place usual and necessary.*
 - 2. *Date.*
- 31. *Effect of omitting Date.*
 - 3. *Sum superscribed.*
- 32. *Mode of Superscription.*
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5. *Word "Pay."*

- 34. *Effect of the Word.*
- 6. *Payable upon Condition.*
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- 39. *Effect of the words.*

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- 41. *Statement of the Sum in words.*
- 42. *It must be a specific Sum.*

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- 45. *Manner of signing.*
- 46. *Signature by Agent.*
- 47. *By Persons as Partners or otherwise.*
- 48. *Time of signing.*
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- 51. *Usual manner of giving Acceptance.*
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- 52. *Variations in the Form.*
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Qualified Acceptance.
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- 53. *Partial Acceptance.*
- 15. *Words "Payable at," in Acceptance.*
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in Full.
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written.*

*Indorsement.
for Part.
Indorsements.*

*STAMP.
of the Requisites of a*

*not duly stamping.
liable in Evidence.
ed at, when.
Instrument within the
Stamp Acts.
er containing a mere*

*iving a mere Authority.
med Foreign Bills
Stamp Acts.
in Ireland.
in Jamaica.
in, and payable out of,
tain.*

*f Bills of Exchange.
in fieri.
uing a Bill.
d issue of a Bill.
e Alteration of a Bill.
int of Stamp.
the Date.
the Sum.*

*CONSIDERATION.
the Subdivision.
f Consideration.
n presumed to be good.
the Consideration.
l Consideration.
f Consideration.
nt of Consideration.
mediate Parties.
note Parties.
Consideration.*

*75. Parties liable for Want of Consi-
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4. Illegality of Consideration.

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*77. Bills assignable though Choses in
Action.*

1. What Instruments are trans- ferrable.

78. Bills payable to Order, &c.

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2. Bills transferrable by Indorse- ment.

*80. What comprehended under Indorse-
ment.*

81. Indorsement by Agents.

*82. Indorsement by Executors and
Administrators.
by Partner.*

*83. Indorsement by Bankrupt or his
Assignees.*

84. Indorsement by a Married Woman.

*85. Indorsement to Persons generally.
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87. Indorsement of Bill in Blank.

*88. Indorsement may be overwritten,
in what manner.*

89. Special Indorsement.

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91. Indorsement after Bill is paid.

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ruptcy.*

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3. Bills transferrable by Delivery without Indorsement.

95. What Bills pass by Delivery.

*96. What is a sufficient Transfer by
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97. A Sale not a Transfer.

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*99. Not to be given by Females Covert
or Infants.*

Not by Persons not Parties.

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Acceptance by several, not Partners.

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100. *Parol Acceptance, &c.*

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102. *Foreign Bills not within the Statute.*

What amounts to an Acceptance.

103. *Time of Accepting.*

Before Bill drawn.

3. *Terms and Extent of Acceptance.*

104. *Absolute or qualified Acceptance.*

105. *Conditional Acceptances.*

Condition to be performed.

4. *Effect of an Acceptance in Evidence.*

106. *What Acceptance admits.*

107. *Evidence that Effects are in Acceptor's Hand, when.*

108. *Proof of Acceptance.*

5. *Acceptance supra Protest for Honour.*

109. *Definition.*

110. *Who may Accept for Honour.*

111. *Effect of acceptance for Honour. Liability of Acceptor for Honour.*

112. *Remedy for Acceptor for Honour.*

VII. PAYMENT.

113. *Contents of the Division.*

1. *To whom Payment to be made.*

114. *To the Holder.*

115. *To the wrongful Holder.*

2. *Time when Payment is to be made.*

116. *Payment on the Day.*

117. *Payment before Bill is due.*

3. *Mode of Payment.*

118. *Part Payment.*

119. *What amounts to Payment.*

Payment supra Protest for Honour.

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120. *Kinds of Presentment.*

1. *Presentment for Acceptance.*

121. *What Bills must be presented.*

Time of presenting.

122. *To whom to be made.*

123. *Bill to be left with Drawee.*

Liability of Parties in case of Accident to Bill.

124. *Consequence of Neglect to present for Acceptance.*

2. *Presentment for Payment.*

125. *Division of the Subject.*

1st. *Person to whom to be made.*

126. *Presentment to be made to Drawee.*

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127. *To be made on the Day when due, or a few Days after.*

128. *What Hours of the Day.*

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3d. *Place where to be made.*

130. *Presentment at Residence of Drawee.*

At Place directed by Director.

At Place where made payable by Acceptor.

4th. *Mode of making Presentment.*

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Presentment not to be dispensed with, when.

IX. NOTICE.

133. *Different Kinds of Notice.*

1. *Form of the Notice.*

134. *What Notice sufficient or otherwise.*

135. *Need not be in Writing. A verbal Message, when sufficient.*

2. *Mode of giving Notice.*

136. *By Post.*

By other Conveyance.

3. *Time when Notice ought to be given.*

137. *Within reasonable Time.*

Parties live in different
 es.
 n of Proof lies on Plaintiff.
 , when excused.
 he Person by whom
 ce should be given.
 given by Party to Instru-
 t.
 not be actual Holder.
 Person to whom Notice
 should be given.
 al Rule.
 otice to one not Party to
 .
 ie of several Parties suffi-
 .
 e to Person in Attendance.
 e in Case of Bankruptcy.
 e to Drawer, when necessary
 otherwise.
 e to Acceptor not necessary.
 e to Indorser necessary.
 e there are several Indorsers.
 uence of Neglect to give
 Notice.
 arge of Drawer, &c.
 e and Waiver of Notice.
 ing Notice.
 er of Notice.

X. PROTEST.

- 148. Definition.
 As to Foreign Bills.
 As to Inland Bills.
- 149. Presentment of Foreign Bills.
 Noting.
- 150. Notice of Protest.
- 151. Protest for better Security.
- 152. In Case of Acceptance, &c. for
 Honour.
- 153. Where Protest should be made.
- 154. Proof of Protest.
- 155. Stamp on Protest.

XI. REMEDY BY ACTION ON BILLS.

- 156. Form of Action.
 Staying Proceedings.
- 157. Effect of the New Rules.
 of 9 G. 4, c. 15, as to
 Variances.
 of 3 & 4 W. 4, c. 41, as to
 Initials.
- 158. Defences to the Action.
 In case of Bill being lost.
 In case of Forgery.
 Infancy.
 Payment or Satisfaction.
 Statute of Limitations.
 Indulgence.
 Consideration.

A bill of exchange is defined to be an open letter of request Definition.
 man to another, desiring him to pay a sum named therein
 person on his account. It may be either inland or foreign,
 . ii. tit. **BILLS OF EXCHANGE.**

ll of exchange is a simple contract, and has for the most **Bills of ex-**
 roperties of a simple contract; therefore a contract by bill **change are**
 personal representative and not the heir, as in the case of a **simple con-**
 y specialty, 2 Saund. 137, n. u; so it is within the statute **tracts.**
 ons, and must be sued for within six years after it becomes
 see *infra*, sect. 158); so it is to be considered as a simple
 ebt in the course of administration, which an executor or
 ator cannot discharge before debts by bond, without being
 a *devastavit*, (see Dig. p. ii. tit. **EXECUTORS**); and bills are
bilis, which follow the person of the debtor where he resides,

<i>Bills of Exchange.</i>	and not, as in the case of specialty, where the bill is found at the holder's death, <i>Renew v. Axton</i> , Carth. 3.
Distinguished from simple contracts, in what.	3. Contracts by bills differ from other simple contracts in these particulars:
Effect of altering a bill of exchange.	First. That an alteration of the instrument vitiates the contract, in the same manner as in the case of deeds, <i>Master v. Miller</i> , 4 T. R. 320; in error, 2 H. B. C. 140. But a distinction has been taken between alterations that are material and those which are not so, as altering the place of payment without the consent of the acceptor, held to be material, <i>M'Intosh v. Haydon</i> , Ry. & Mood. 362; <i>sed secus</i> , where it is done with his consent, <i>Farquhar v. Southey</i> , 1 Mood. & Malk. 17. As to the effect of altering a bill of exchange under the Stamp Acts, see <i>post</i> , sect. 65, 67.
Consideration.	Secondly. In the case of simple contracts generally, the law presumes that there has been no consideration unless it appears, but in the case of contracts on bills, a consideration is presumed until the contrary appears, see further <i>post</i> , sect. 70—76.
Negotiability of bills.	Thirdly. Bills of exchange are negotiable instruments, although in the case of simple contracts generally, being <i>choses in action</i> , they are, by a rule of common law, not assignable, see further <i>post</i> , sect. 77, <i>et seq.</i>
	Fourthly. Bills are not the subjects of larceny at common law, but by the 7 & 8 G. 4, c. 29, s. 5, the stealing any bill is punishable in the same manner as larceny of any chattel of like value. Embezzlement of bills by clerks or servants is, by s. 47 of the same statute, made felony; and by s. 49 such embezzlement by agents is a transportable misdemeanor.
Particular qualities of bills of exchange.	4. The peculiarities belonging to bills of exchange may be considered under the following heads: 1. Parties to the contract; 2. Form of the instrument; 3. The stamp; 4. Consideration; 5. Transfer and indorsement; 6. Acceptance; 7. Payment; 8. Presentment; 9. Notice; 10. Protest; 11. Remedy by action on bills.
	I. PARTIES TO THE CONTRACT.
Contents of the subdivision.	5. Under this head may be considered—1. Who may be parties: 2. Number and character of the parties: 3. The rights and liabilities of the parties.
	1. <i>Who may be Parties to the Contract.</i>
Persons not merchants.	6. Every person having a capacity to contract may be a party to a bill of exchange, whether he be a merchant or not, although it was thought otherwise at one time, <i>Wetherley v. Sarsfield</i> , 1 Show.

125, overruling *Oaste v. Taylor*, Cro. Jac. 306; *Eaglechild's case*,
 Het. 167; *Edgar v. Chut*, 1 Keb. 592.

*Bills of
 Exchange.*

7. As a rule, a corporation can contract by writing only under their common seal; but as an exception to this rule, it has been held that assumpsit will lie on a bill of exchange against a trading corporation, whose power of drawing and accepting bills is recognized by statute, *Murray v. East India Company*, 5 B. & A. 204; see also *East London Waterworks Company v. Bayley*, 4 Bing. 283; but a company incorporated for carrying on public works is not a corporation within the exception, *Broughton v. London Waterworks Company*, 3 B. & A. 1; and as to the restrictions imposed on companies in regard to the issue of bills, see Dig. p. ii. tit. BANK OF ENGLAND.

Corporations.

8. An infant cannot bind himself by a bill drawn in the course of trade, *Williams v. Harrison*, Carth. 160; so not even for necessities, *Williamson v. Watts*, 1 Campb. 552; see further, Dig. p. iii. tit. GUARDIAN AND INFANT.

Infants.

9. A *feme covert* cannot bind herself by drawing a bill of exchange; and by her indorsement she can transfer no interest, the whole property being vested in the husband, *Barlow v. Bishop*, 1 East, 432; but see further Dig. p. iii. tit. HUSBAND AND WIFE.

Femes covert.

10. Bills of exchange may be drawn, accepted or indorsed by agent or attorney of the party; and an agent for that purpose may be constituted by parol, when he is said to draw, accept or indorse by procuration. An agent will be personally liable on his drawing a bill, unless he either sign his principal's name only, or expressly states in writing his ministerial character, *Leadbitter v. Farrow*, 5 M. & S. 345; *Sowerby v. Butcher*, 2 Cr. & M. 368. A power of attorney authorizing an agent to demand, sue for, recover and receive, by all lawful ways and means whatsoever, all monies, debts, dues whatsoever, and to give sufficient discharges, does not authorize him to draw bills for his principal, *Murray v. East India Company*, *sup.* recognized in *Goldstone v. Tovey*, 6 Bingh. N. C. 101; and where a power is given to accept bills, it must be exercised in the character of agent, and not in the character of a partner, *Attwood v. Munnings*, 7 B. & C. 278; S. C. 1 Man. & Ry. 66.

Agents.

11. If a bill of exchange is drawn upon a firm and accepted by one of the partners, he must be understood to exercise his power to bind his partners, and to accept the bill according to the terms on which it was drawn, *Mason v. Rumsey*, 1 Campb. 384; so it is competent to any partner by his indorsement in the name of the firm to pass their interest in a bill, *Swan v. Steele*, 7 East, 210; see also *Vere v. Ashby*, 10 B. & C. 296; but where persons are partners in a

Partners.

Bills of Exchange.

particular and single transaction only, and not general partners, they are not liable even to a *bonâ fide* holder on a bill issued by one of them in relation to a different concern, *Baker v. Charlton*, 1 Peake, 80; so if one partner draw on other partners by name, and they individually accept, he may recover against them, because by such an acceptance a separate right is acknowledged to exist, *Neale v. Turton*, 4 Bing. 149; but the members of a joint stock company cannot bind the company by bills, *Bramah v. Roberts*, 3 Bing. N. C. 963; so after a dissolution, one of the partners cannot bind the others by an indorsement, *Abel v. Sutton*, 3 Esp. 108; but articles of agreement between the partners that no one partner shall draw, accept or negotiate bills of exchange, will not protect the firm against bills drawn in violation of the agreement, unless the holder had at the time notice of the stipulation, *Galway v. Matthew*, 10 East, 264.

Spiritual persons.

Before the 1 & 2 Vict. c. 10 (see Dig. p. ii. tit. COMPANIES), if spiritual persons were members of a company, bills drawn by the company were void under the 57 G. 3, c. 99, which restrains such persons from being occupied in trading, *Hall v. Franklin*, 3 M. & W. 259.

Executors.

12. An executor, like an agent, is personally liable on drawing any bill, though he describe himself as executor, unless he expressly confine his stipulation to pay out of the estate, *Childs v. Moriens*, 2 B. & B. 460; S. C. 5 Moore, 281; *Ridout v. Briston*, 1 Cr. & J. 231; S. C. 1 Tyrw. 90. The mere indorsement of a bill by one of two executors, in order to enable the other to receive the amount, is not sufficient to charge him who does not receive the money, *Hovey v. Blakeman*, 4 Ves. 608.

2. Number and Character of the Parties.

Who are usually parties.

13. The parties to a bill in the commencement usually are the party making it, called the *drawer*; the party drawn upon, called the *drawee*, who, after acceptance, is called the *acceptor*; and the person in whose favour it is made, the *payee*, who, after the indorsement, is called the *indorser*, and the person in whose favour the indorsement is made, the *indorsee*, and by the transfer of the bill the number may be indefinitely extended. The party in possession of the bill, and intitled to receive its contents, is the *holder*.

Three persons parties.

14. Regularly, there ought to be three persons parties to a bill of exchange, that is, drawer, drawee and payee; yet there may be only two, when the characters of drawer and payee are, as is sometimes the case, united in the same person; as if A. draw a bill thus: "Pay to me, or my order."

Acceptor &c. for honour.

15. A person may likewise become a party to a bill either by

accepting after protest for non-acceptance, for the honour of the drawer, where the drawee refuses to accept, or paying after protest for non-payment, either for the drawer or any of the indorsers, see further, *post*, sect. 109 *et seq.*

*Bills of
Exchange.*

3. *Rights and Liabilities of Parties.*

16. The drawer's contract and responsibility is in the nature of a guarantee that the bill shall be duly accepted and paid when presented; and in case of default, and having due notice of the dishonour, he will pay the bill himself, with the expences incurred thereon. The acceptor is the party primarily liable on the bill, being considered the principal debtor, and the other parties as sureties, *Clerk Devlin*, 3 B. & P. 366. The rights and liabilities of the indorser are precisely the same as those of the drawer, for every indorser is considered in the light of a new drawer, *Allen v. Walker*, 2 M. & W. 17.

Rights and liabilities in general.

17. If a bill is presented, and acceptance is refused, notice for non-acceptance must be given to the drawer, see further, *post*, sect. 133. If there be any consideration or value for the acceptance, a drawer may sue the acceptor, without presenting it to him (unless it be accepted payable at a particular place, see *post*, sect. 54); and it seems to be now settled, that if he afterwards pay the amount, he may maintain, in his own name, and without any assignment of the bill from the payee, a special action on the case, and recover the money so paid, *Parminster v. Symons*, 1 Wils. 186; S. C. (in error), D. P. B. P. C. 43.

Drawer.

Right of action.

17. If the bill be dishonoured when due, the drawer is responsible to the holder, *Cowley v. Dunlop*, 7 T. R. 572; but the bill must have been duly presented for payment, see *post*, sect. 125 *et seq.*; and the drawer is intitled to notice for non-payment, see further, *post*, sect. 34 *et seq.* If a bill is accepted for the accommodation of the drawer, but is without value or consideration, he engages to protect the acceptor, *Young v. Hockley*, 3 Wils. 346.

Liability of drawer to holder.

Presentment and notice to drawer.

18. If the holder of a bill gives time to the acceptor, this is a discharge to the drawer, *Philpot v. Briant*, 4 Bing. 717; S. C. 1 M. & P. 754; S. C. 3 C. & P. 244; but if the promise of forbearing to sue be not in writing, and consequently void, the drawer is in such case not discharged, *ib.*; so taking part of the amount of the acceptor, and offering to take a warrant of attorney to secure the payment of the residue by instalments, which offer was not accepted, was held not to be such a giving of time as would discharge a drawer, *Hewet v. Goodrich*, 2 C. & P. 468; the drawer is discharged only by the

Effect of indulgence as to a drawer.



- Bills of Exchange.* holder disabling himself from suing, *ib.*; and the rule as to discharging the drawer applies to accommodation as well as other bills, *Fentum v. Pocock*, 5 Taunt. 192, overruling *Laxton v. Peak*, 2 Campb. 185; and *Collott v. Haigh*, 3 Campb. 281.
- Interest payable by drawer. 19. A drawer is liable to pay interest only from the time that he receives notice of the dishonour, *Walker v. Baynes*, 5 Taunt. 240; S. C. 1 Marsh. 36.
- Liability of indorser. 20. The rights and liabilities of an indorser are similar to those of the drawer, he being in the nature of a new drawer, *Hill v. Lewis*, Skinner, 411; *Lake v. Hayes*, 1 Atk. 282; standing in the place of the original drawer, to whom the indorsee looks for payment, in case the drawee makes default, *Heylin v. Adamson*, 2 Burr. 670; but the indorsee may resort to either, *Bromley v. Frazer*, 1 Stra. 441; so where there are several indorsers, the names of the intermediate indorsers may be struck out, and a remote indorsee may declare as the immediate indorsee of the payee or first indorser; "for the fair holder of a bill may consider himself as the indorsee of the payee, and strike out all the other indorsements," per Lord Kenyon, C. J. *Smith v. Clarke*, Peake, 225; S. C. 1 Esp. 180.
- Notice to indorser. 21. So an indorser, like a drawer, is intitled to notice of dishonour, see further, *post*, sect. 145; and it was formerly holden that an indorsee could not sue his indorser until he had demanded payment of the drawer; but it is now settled that such demand is unnecessary, *Heylin v. Adamson*, *ub. sup.*
- Effect of indulgence as to indorsers. 22. Indulgence given by the holder to an acceptor will, as in the case of a drawer (see *supra*, sect. 18), discharge the indorser. Therefore, where the holder received of the acceptor part of the amount of a bill, and his security for the remainder, held that he could not sue the indorser, *English v. Darby*, 2 B. & P. 61; S. C. 3 Esp. 49. Discharging a prior indorser is a discharge to other prior indorsers, or to the persons whose names are on the bill prior to that of the party discharged, *Ellison v. Dezell*, Selw. N. P. 365, 10th ed.; but a holder may sue a prior indorser, although he has taken a subsequent indorser (*i. e.* one whose name was on the instrument subsequent to that of the party indulged) in execution, and afterwards let him go at large on a letter of licence, without having paid the debt, *Hayling v. Mulhall*, 2 Bl. 1235; *Clarence v. Dalton*, 4 M. & S. 226; but in the case of a drawer as well as an indorser, if it be done with their consent, they will not be discharged, *Clarke v. Declis*, 3 B. & P. 363; but the consent must be unequivocally given, *Wethall v. Masterman*, 2 Campb. 179.
- Liability of acceptor. 23. The acceptor is considered as the principal debtor, and prima-

rily liable to all the parties to the bill, *Clarke v. Devlin*, *ub. sup.*; *Pownal v. Ferrand*, 6 B. & C. 442; *Yallop v. Eber*, 1 B. & Ad. 703; even the acceptor of an accommodation bill is, as against a *bonâ fide* holder, liable, *Harrison v. Courtauld*, 3 B. & Ad. 37; but such an acceptor is intitled to protection from the drawer, see *supra*, sect. 17. The acceptor is liable to the full amount of the bill as between himself and third persons, but as between himself and the drawer only to the value for which the acceptance was given, *Darnell v. Williams*, 2 Stark. 166. Therefore, in an action against an acceptor, he may shew that he accepted only part for value, *ib.*

*Bills of
Exchange.*

24. The liability of the acceptor does not attach by merely writing his name, but upon the subsequent delivery of the bill; therefore he is at liberty to cancel his acceptance before he has parted with the instrument, *Cox v. Troy*, 5 B. & A. 474; S. C. 1 D. & R. 38, overruling in part *Thornton v. Dick*, 4 Esp. 270; *Trimmer v. Oddy*, cited *Bentinck v. Dorrien*, 6 East, 200; and recognizing *Raper v. Birkbeck*, 15 East, 20.

Acceptor may
revoke his ac-
ceptance.

25. It is no defence for the acceptor that the bill has not been presented for payment, even when accepted payable at a specified place, unless he makes it payable at a particular place in pursuance of the statute (1 & 2 G. 4, c. 78; see Dig. p. ii. tit. BILLS); and see further, *post*, sect. 54. And an acceptor is in no case intitled to notice for non-payment, for he is presumed to be aware of the default, *Turner v. Hayden*, 4 B. & C. 1.

Not intitled to
presentment;

or notice of
non-payment.

26. The acceptor is liable to pay interest on the bill from the time it became due; but not re-exchange, *Napier v. Schneider*, 12 East, 420; nor the expences of postage or noting, *Kendrick v. Lomax*, 2 C. & J. 405. And if separate actions be brought against the acceptor, drawer and indorser, the court will not stay the proceedings on his application, unless he pay the debt and costs not only of his own action, but of that pending against the drawer and indorser, *Tidd*, O. P. 541, 9th ed.

Interest payable
by acceptor.

27. An acceptor may be discharged by a renunciation on the part of the holder, but nothing short of an express renunciation will be sufficient, *Dingwall v. Dunster*, Dougl. 235; *Farquhar v. Southey*, 1 M. & M. 14. Receiving interest from the drawer will not discharge the acceptor, *Attwood v. Crowdie*, 1 Stark. 483; and the renunciation for a part only is not sufficient, unless there be a consideration, *Parker v. Leigh*, 2 Stark. 228. The cancellation of the acceptor's name by the holder is a waiver of the acceptance; but if done by a third party, it must appear to have been done with the holder's consent, *Sweeting v. Halse*, 9 B. & C. 365; so the liability

How dis-
charged from
his liability.
Renunciation
by holder.

Cancellation a
waiver.



Bills of
Exchange.
Extinguish-
ment.

of the acceptor may be extinguished, by taking from him a security for the debt by specialty, provided that the security does not recognize the old instrument, *Tropenny v. Young*, 3 B. & C. 208.

II. FORM OF THE INSTRUMENT.

Requisites of
the instrument.

28. Although no precise form of words is necessary to constitute a bill of exchange, yet it must have some qualities to render it a valid instrument; an attention therefore to the form is of importance *Darkes v. Lord de Lorraine*, 3 Wils. 207; S. C. 2 Bl. 782. An instrument which appears on the face of it to be a bill of exchange may be treated as such, although words be introduced into it for the purpose of deception, which might make it a promissory note, *Allan v. Marston*, 4 Campb. 115.

To be in writing.

Although a bill must be in writing, yet if written in pencil it will be as valid as if written in ink, *Geury v. Physic*, 5 B. & C. 234; S. C. 7 D. & R. 653.

In what par-
ticulars.

29. The points to be attended to in relation to the form are, 1. The place where made; 2. The date of the bill; 3. The sum superscribed; 4. Time when payable; 5. The word "pay;" 6. Payable upon condition; 7. Payee; 8. Words "or order;" 9. Place where payable; 10. Sum payable; 11. Words "value received;" 12. The drawer's signature; 13. Direction to the drawee; 14. Form of the acceptance; 15. Words "payable at" &c.; 16. The indorsement.

1. Place where made.

Dating the
place usual
and necessary.

30. It is usual, and as it seems necessary, to date the bill at the place where drawn. In *Mann v. Moor*, Ry. & Mood. 249, a general direction, as "London," or "Manchester," &c. was held sufficient to give the drawer of a bill notice of its dishonour; but in *Walter v. Haynes*, Ry. & Mood. 250, which was an action by an indorsee against an indorser, the same sort of direction was held to be too general to raise a presumption that the letter reached the particular individual intended.

2. Date.

Effect of omit-
ting date.

31. Regularly every bill of exchange ought to be dated; but if the date be omitted, or it be an impossible date, the Court will intend the bill to bear date the day on which it was made, *Goddard's case*, 2 Co. 5; *De la Courtier v. Bellamy*, 2 Show. 422; *Giles v. Bourne*, 6 M. & S. 73. A bill of exchange is not vitiated by being post-dated, although a penalty of £100 is incurred by so doing under the Stamp Act, 55 G. 3, c. 184; see Dig. p. iii. tit. STAMPS.

3. *Sum superscribed.*Bills of
Exchange.

2. The sum for which a bill is made is usually superscribed in figures, which will serve to aid any omission in the body of the bill, where the word "fifty" was written without the word "pounds;" *Hot's case*, 2 East's P. C. 951.

Mode of super-
scription.4. *Time when payable.*

3. Where the time for payment of the amount is not stated on the face of the bill, it is payable immediately or on demand, that is, on presentation for payment. "If the day be fixed, it is not material if the day be ever so distant;" per Willes, C. J., *Colehan v. Cooke*, 11. 396.

Effect of not
stating time.

The expression "after sight" on a bill means "so many days next after the bill shall be accepted, or else protested for non-acceptance, not from the date of the bill, nor from the day that the same came to hand, or was privately exhibited to the party on whom it is drawn to be accepted, if he do not accept thereof; for the sight must bear in a legal way;" Marius, cited per Ld. Kenyon, C. J., *Campbell v. French*, in error, 6 T. R. 200.

After sight.

5. *Word "pay."*

34. No particular form of words is necessary to constitute an order to pay, but it appears that the words ought to amount to an order or direction to pay, *Morris v. Lee*, 2 Ld. Raym. 1396. A bill in this form, "Mr. N. will much oblige Mr. W. by paying to J. R. or order on account," was held to be a valid instrument, *Ruff v. Webb*, Esp. 126; but an instrument in this form, "Mr. L. please to let the bearer have seven pounds, and place it to my account," "does not purport to be a demand made by a party having a right to call the other to pay," per Ld. Tenterden, C. J., *Little v. Slackford*, Mood. & Malk. 171.

Effect of the
words.6. *Payable upon condition.*

35. To constitute a bill of exchange on which an action will lie, it must be made payable in all events, *Macleod v. Snee*, 2 Ld. Raym. 1. Where payment is made to depend upon the happening of a condition, or upon the contingency of an event which may never occur, the instrument is void, *Carlos v. Fancourt*, 5 T. R. 482; which was the case of a promissory note, see further, *post*, PROMISSORY NOTES. So if the money is to be paid out of a fund which is uncertain, the instrument is not a bill of exchange, as an order to pay

What is a good
bill or other-
wise as to the
mode of pay-
ment.

Bills of Exchange. "out of rents," *Jenny v. Herle*, 2 Ld. Raym. 1361; S. C. 8 Mod. 266; or "out of money when received," *Haydock v. Lynch*, Raym. 1563; *Dankes v. Lord Deloraine*, 3 Wils. 307; S. C. 2 Bl. 362; or "out of growing subsistence," *Josceline v. Lessere*, 10 Mod. 294; S. C. Fort. 281. But where the thing is of a public nature, and therefore morally certain, as where it is to depend upon the paying off a government ship, it has been held good, *Andrews v. Franklin*, 1 Stra. *sed quære*.

7. The Payee.

- To whom made payable.** 36. A bill may be made payable to the drawer himself or to a third person. Neither need be named, if it be made payable to order or to bearer, *Anon.* Comb. 401; but it must not be made payable in the alternative, as to "A. or B.," being void for uncertainty, *Blanchenhagen v. Blundell*, 2 B. & A. 417; but a bill "payable to B. C.," there being father and son of the same name, is *prima facie* payable to the father, yet evidence is admissible to shew that the son was really meant, *Sweeting v. Fowler*, 1 Stark. 106; and a bill issued in blank for the name of the payee may be filled up by a *bona fide* holder with his own name, and will bind the drawer, *Crutchley v. Clarence*, 2 M. & Sel. 90; so a bill made "payable to the order of —," may be filled up by any person who can shew that he came regularly into the possession of it, *Crutchley v. Mann*, 5 Taunt. 529; S. C. Marsh. 29; and a bill may be declared on in that form, *Attwood v. Griffin*, Ry. & Mood. 425.
- Name of payee in blank.**
- Payable to bearer.** 37. If a bill be made payable to "Ship *Fortune* or bearer," it is good, for in law it is payable to-bearer only without any indorsement, *Grant v. Vaughan*, 3 Burr. 1516; so if made payable to "J. S. or bearer," J. S.'s indorsement is not necessary, Bayl. Bills, 5th ed. 81.
- Legal payee.** If a bill be made payable to "A. for the use of B.," or "in trust for him," A. has the legal interest and is the legal payee as distinguished from B., who has the equitable interest, *Evans v. Cramlington*, Carth. 5.
- Fictitious payee.** 38. If a bill be made payable to a fictitious person, it may, in the hands of an innocent holder, be treated and declared on as a bill payable to bearer, *Tatlock v. Harris*, 3 T. R. 174; and the holder need not prove that the defendant (*acceptor*) had actually received value, *Vere v. Lewis*, ib. 182; recognized in *Minet v. Gibson*, 3 T. R. 481; S. C. affirmed in error, D. P. 1 H. Bl. 569; and it seems to be now settled that a bill of this kind may be declared on as a bill payable to bearer, *Tuft's case*, Leach, Cro. Law, 206; but parties cognizant of the transaction are not at liberty to avail themselves of the irregularity; and if money be paid by a *bona fide*

indorsee in consideration of the bill being indorsed to him, he may recover it in an action for money had and received to his use, *Bennett v. Farnell*, 1 Campb. 130; see further as to payment, *post*, sect. 113 *et seq.*

*Bills of
Exchange.*

8. Words "or order," or "or bearer."

39. These words are necessary to make a bill of exchange negotiable, so as to make the drawer chargeable to the indorsee, *Hill v. Lewis*, 1 Salk. 133; although it is a valid instrument as between the parties themselves, *ib.*; and if it be assigned by the payee, he is chargeable at the suit of the indorsee, *ib.*

Effect of the words.

9. Place where payable.

40. The name of the place where the bill is payable is not frequently inserted by the drawer; but where this is done, and the acceptor makes it payable at the place pointed out by the latter, held, that to make the drawer chargeable on nonpayment by the acceptor, a presentment at the place mentioned in the bill is necessary, *Gibb v. Mather*, 8 Bing. 214; S. C. 1 M. & Sc. 387; S. C. 2 Cr. & J. 254.

Effect of inserting name of place.

10. Sum payable.

41. The sum is usually expressed in words at length; and where there is any variance between the sum mentioned in the body of the bill and that superscribed in figures, the latter would be rejected, *Marius*, 138; *Beawes*, 193; but an omission in the body of the bill may be aided by the superscription, see *supra*, sect. 32.

Statement of the sum in words.

42. A bill is not valid unless it be solely for the payment of a specific sum of money; therefore an instrument in these words, "Pay A. B. the proceeds of a ship, value about £2000," is not a bill of exchange, *Jones v. Simpson*, 2 B. & C. 318; S. C. 3 D. & R. 545. So an instrument in this form, "To pay £100, and also to deliver up a horse," is void, *Martin v. Chauntry*, 2 Stra. 1271; this last was the case of a promissory note, on which questions of this kind have for the most part been raised; see further, *post*, PROMISSORY NOTES.

It must be a specific sum.

11. Words "value received."

43. These words, though very frequently used, and formerly thought necessary to the validity of the bill, *Hodges v. Steward*, Skinn. 346; *Anon.* 12 Mod. 345; *Banbury v. Lisset*, 2 Stra. 1211, are not held to be so now; consideration being presumed by law, it is now held that no argument or inference that it does not exist can be founded on the absence of the words, *Grant v. Da Costa*, 3 M. & S. 352. As to the consideration, see *post*, sect. 71 *et seq.*

Effect of omitting the words.



*Bills of
Exchange.*12. *Drawer's Signature.*

Necessity for
name to appear
on the instru-
ment.

44. The drawer's name ought to appear on the face of the instrument, but it is not necessary that it should be at the foot; a bill in this form, "Mr. A. B. requests Mr. C. D. to pay," &c. has been held valid, *Ruff v. Webb*, 1 Esp. 126.

Manner of
signing.

45. The signature may be in pencil, *Geary v. Physic*, 5 B. & C. 234; or by a mark or cross by way of signature, *Phillimore v. Barry*, 513; or it may be printed, *Schneider v. Norris*, 2 M. & S. 286.

Signature by
agent.

46. When an agent draws a bill for his principal, the signature should be in the name of the latter, as "J. W. (*agent*) for B. G. (*principal*);" or thus, "B. G. per procuration J. W." If an agent sign his own name only, he is personally liable, *Thomas v. Bishop*, 2 Stra. 955; *Lefevre v. Lloyd*, 5 Taunt. 749; *Eaton v. Bell*, 5 B. & A. 34; *Ledbitter v. Farrow*, 5 M. & S. 349.

By persons as
partners or
otherwise.

47. In the case of partners, one member may sign for himself and the others; or an agent may sign for the firm, *Wood v. Telford*, 2 Show. P. C. 219; but where they are not partners, each must sign for himself; in such case no one person has implied authority to sign for another, *Ex parte Hunter*, 2 Rosc. 363; *Ex parte Collins*, 2 Cox, 427; see further, as to signing promissory notes, *post*, PROMISSORY NOTES. Persons who are not partners may make themselves so by the form of the instrument; see further, as to indorsement, *post*, sect. 81 *et seq.*

Time of signing.

48. A bill of exchange, unlike a deed, may be executed before it is filled up; if therefore a stamped paper be signed, leaving blanks for the date, sum, time when payable, and name of the drawee, the drawer will be chargeable for any sum afterwards inserted within the amount warranted by the stamp, *Collis v. Emmett*, 1 H. Bl. 313; it is a letter of credit for an indefinite sum, *Russell v. Langstaffe*, 1 Dougl. 496.

How signature
may be pleaded.

49. It is not necessary in a declaration on a bill to state that the drawer signed, for drawing necessarily implies signing, *Erskine v. Murray*, 2 Stra. 817; S. C. 2 Ld. Raym. 1542; S. C. 1 Barnard. 87.

13. *Direction to the Drawee.*

Effects of not
putting the
name of drawee.

50. A bill of exchange being in its original a letter, it ought to be properly addressed to the drawee; but where it was made payable at a certain place without mentioning the drawee's name, and he accepted it, it was not competent to him to make the objection, *Gray v. Milner*, 8 Taunt. 739; so a bill directed to A., or in his absence to B., being accepted by A., may be declared on without notice of B., *Anon.* 12 Mod. 447.

Directed to two
in the alterna-
tive.

14. *Form of the Acceptance.**Bills of
Exchange.*

51. The usual mode of accepting a bill of exchange is by writing the word "accepted" or "presented" only, and subscribing the drawee's name. Formerly, before the 1 & 2 G. 4, c. 78, s. 2 (see *supra* p. ii, tit. BILLS (EXCHANGE)), a bill of exchange might be accepted by parol or by collateral writing, *Johnson v. Collings*, 1 East, 1; *Powell v. Monnier*, 1 Atk. 611; and as the statute does not extend to foreign bills, the law in regard to them remains unaltered, *supra* further as to acceptance, sect. 98 *et seq.*

Usual manner
of giving ac-
ceptance.
Parol accept-
ance.

52. By the form of the instrument the bill may be absolute, *i. e.* where there are no words of restriction; and qualified, when the acceptance has qualifying or restraining words annexed to it; if qualified with a condition, it is termed a conditional acceptance; as "to pay as remitted for," *Bunbury v. Lissett*, 2 Stra. 1212; "to pay when in cash for the cargo of the ship *Thetis*," *Julian v. Shobrooke*, Wils. 9; "to pay when goods consigned to him the (drawee) were sold," *Smith v. Abbott*, 2 Stra. 1152; or "if a house be given up to acceptor on a named day," *Swan v. Cox*, 1 Marsh. 176; so an answer "that a bill would not be accepted till certain stores were sold," *Johnson v. Dunlop*, 2 Cowp. 571. Whether an acceptance is conditional or absolute is a question of law, *Sproat v. Matthews*, 1 T. 182; but a mere verbal condition is inadmissible in evidence to qualify the absolute written engagement, even between the original parties, *Hoare v. Graham*, 3 Campb. 57.

Variations in
the form.
Absolute ac-
ceptance.
Qualified ac-
ceptance.
Conditional
acceptances.

53. An acceptance may be qualified or partial, if it engages to pay a part only, *Wegersloff v. Keene*, 1 Stra. 214; or to pay at a time different from that at which the bill is made payable by the drawer, *Walker v. Attwood*, 11 Mod. 190.

Partial accept-
ance.

An acceptance may also be qualified as to the place of payment, *supra* *infra*, the next section.

15. *Words "payable at" in an Acceptance.*

54. The legal operation of these words in an acceptance was, before the 1 & 2 G. 4, c. 78, a matter of some discussion, it not being settled whether the acceptor by using these words incurred only a restricted liability, that is, was not responsible, unless the bill were presented for payment at the place specified, or whether such acceptance was to be deemed a general acceptance, leaving the holder at liberty to present at the place specified, or elsewhere as he chose, *Sebag v. Bihol*, 4 M. & S. 462; and see prior cases ruling otherwise, *Rowe Young*, 2 B. & B. 165; *Callaghan v. Aylett*, 3 Taunt. 397;

Operation of
these words
formerly.

Bills of
Exchange.

Gammon v. Schmoll, 5 Taunt. 344. By the statute it is now settled, that if a bill be made payable at a particular place, without the words "only and not elsewhere," the acceptance shall be deemed a general acceptance; and it has been held to be immaterial whether the words denoting the place of payment be inserted by the drawer in the body of the bill, or by the acceptor in this acceptance; in either case if the words of the statute be not added, the acceptance will be general, so as to charge the acceptor, *Selby v. Eden*, 3 Bing. 611; 8. C. 11 Moore, 511; recognized in *Fayle v. Bird*, 6 B. & C. 531; 8. C. 9 D. & R. 639.

16. *The Indorsement.*

Indorsement in
blank,

55. An indorsement may be in blank, that is, by the mere signature of the party transferring, without any other words, the effect of which is to make the bill payable to bearer, *Peacock v. Rhodes*, 2 Dougl. 683; or it may be in full, or a special indorsement, which, besides the signature, expresses in whose favour the indorsement is made, as "pay A. B. or order;" but the omission of the words "or order" in an indorsement is not material, for the indorsee takes it with all its incidents, and among the rest with its negotiable quality, if the bill were originally made payable to order, *Moore v. Manning*, Com. 311.

Where to be
written.

56. An indorsement, as the word imports, is a writing on the back; but it has been held that a writing on the face of the instrument is of the same effect, *R. v. Biggs*, 1 Stra. 18; and a misspelling will not necessarily avoid an indorsement, *Leonard v. Wilson*, 2 C. & M. 589.

Misspelling.

Conditional
indorsement.

57. An indorsement may be conditional in this form, "pay the within sum to A. B., or order, upon my name appearing in the Gazette as ensign in any regiment of the line between the 1st and 64th, if within two months from this date;" and it has been held, that upon such an indorsement neither A. B. nor his indorsee can acquire any right to the money, unless the event specified has occurred, *Robertson v. Kensington*, 4 Taunt. 30.

Indorsement for
part.

58. A bill cannot be indorsed as to part only of the sum due, so as to subject the acceptor to two actions without his consent, *Haskins v. Cardy*, 1 Lord Raym. 360.

Restrictive in-
dorsements.

59. An indorsement may be restrictive, so as to stop the negotiability, as "pay A. B. or order for my use," *Sigourney v. Lloyd*, 8 B. & C. 622; 8. C. 3 Y. & J. 220; or "the within must be credited to A. B.," *Ancher v. Bank of England*, 2 Dougl. 615; or so as to exempt the indorser from personal liability, as in the case of agents, as "pay to A. B. *sans recours*," *Goupy v. Harden*, 7 Taunt. 160;

and it seems that a verbal agreement between the parties will have the effect of a restrictive or qualified indorsement, *Pike v. Street*, Mood. & Malk. 226; see further as to transfer by indorsement, *post*, sect. 80 *et seq.*

*Bills of
Exchange.*

III. STAMP.

60. As to the stamp, which is one of the requisites to the validity of the instrument, it is proper to consider, 1st, The effect of not duly stamping; 2d, What instruments are within the Stamp Acts; 3d, What deemed foreign bills within the Stamp Acts; 4th, Alteration of bills of exchange; 5th, Amount of the stamp.

Stamp one of the requisites of a bill.

1. Effect of not duly stamping a Bill of Exchange.

61. A bill not duly stamped is not available in evidence in courts either of law or equity; therefore a bill of exchange written on a wrong stamp is no payment, *Wilson v. Vysar*, 4 Taunt. 288; and although the plaintiff had been guilty of *laches*, by neglecting to present the bill in time, yet the defendant was not discharged, *ib.*; so the indorser of a bill drawn on an insufficient stamp is not discharged from the debt by the neglect of the indorsee to give him notice of dishonour, *Cundry v. Marriott*, 1 B. & Ad. 696; and the amount is not provable under a fiat in bankruptcy, *Ex parte Manners*, Rose, 48; so it cannot be read to the jury as evidence of the contract, *Jarvis v. Payne*, 1 B. & Ad. 663; overruling *Bishop v. Chambre*, 1 Buss. & Lloyd, 83; but it may be looked at for a collateral purpose, *Gregory v. Fraser*, 3 Campb. 454; see also *Reed v. Deere*, 7 B. & C. 281; *Sweeting v. Halse*, 9 B. & C. 365; and it is no defence, on a prosecution for forgery, that the instrument was not duly stamped, *R. v. Hawkswood*, Bayl. 63.

Bill not available in evidence.

May be looked at, when.

2. What Instruments within the Stamp Acts.

62. A letter from B. requesting A. to pay C. the balance due to him B., and that C.'s receipt should be a sufficient discharge, is not a bill of exchange requiring a stamp as such, under the 55 G. 3, c. 34, *Cromfoot v. Gurney*, 9 Bing. 372; S. C. 2 M. & P. 473; so an instrument in this form, "I hereby authorize A. B. to sell the wicks landed out of the Hope, and thereout to pay C. D. the remainder of his freight, £ signed W. J." is a mere authority, and does not require to be stamped as an order for the payment of money, *Rumfrevs v. Briant*, 4 C. & P. 157; or in these words, "We now authorize you to pay Messrs. (having revoked the former order in their favour) after you have paid yourselves the balance we

Not a letter containing a mere request.

Nor words giving a mere authority.

Bills of Exchange. owe you, from the net proceeds of our shipments to you, or the remainder of the proceeds, provided the same shall not be less than £ 1000," *Hutchinson v. Heynorth*, 9 Ad. & Ell. 375; S. C. D. 266.

3. *What deemed foreign Bills within the Stamp Act*

Bills drawn in Ireland or Jamaica. 63. Bills made in a foreign independent state or at sea do not require an English stamp, nor a stamp of the country where made; Ireland is for purposes deemed a foreign state, *Snaith v. Mingay*, 1 M. & W. 101; Jamaica, *Cruchley v. Mann*, 5 Taunt. 529; S. C. 1 Marsh. 101. To constitute a bill "an inland bill," it must be drawn or dated from some place in the kingdom of England, or the town of Newcastle-upon-Tweed, *Mahoney v. Astlin*, 2 B. & Ad. 478; or the bill be accepted abroad, *Amner v. Clark*, 2 C. M. & R. 101; though dated in some foreign place, *Jordaine v. Lashbrook*, 10 B. & C. 601.

Bills drawn in and payable out of Great Britain. 64. Bills drawn in but payable out of Great Britain are not subject to a stamp duty by the 55 G. 3, c. 184; see Dig. p. ii. tit. BILLS OF EXCHANGE); yet a bill sketched out and accepted here, but signed abroad, has been held to be made abroad, *Boehm v. Bell*, Gow, 56.

4. *Alteration of Bills of Exchange.*

Instrument in fieri. 65. Until a bill is issued, any alteration may be made therein without the concurrence of the parties, without rendering a new stamp necessary; as where a bill is altered from three to four months acceptance, *Kennedey v. Nash*, 1 Stark. 452; so an accommodation bill may be altered before it has been negotiated, *Daws v. Rickards*, 1 B. & A. 674; and where a promissory note was sent back and re-issued into a bill of exchange, the alteration may be considered as a mere correction of a mistake, *Webber v. Maddocks*, 3 Cam. & M. 101.

Effect of issuing a bill. 66. After a bill has been issued, no material alteration can be made without a new stamp, *Wilson v. Justice*, Peake's Add. Cas. 101. It is rendered altogether void by such alteration, so that no action can be maintained upon it even by an innocent indorsee, *Master v. Miller*, 4 T. R. 320. This rule, however, admits of two exceptions: first, as to the nature of the alteration. In one case a bill has been considered as not void, though altered, if it was in the hands of some person intitled to treat it as an assignment for security in law, *Downes v. Richardson*, 5 B. & A. 674; S. C. 101.

l. 332; but in another case, an attempt to negotiate a bill, after acceptance, was held to be the same as actually negotiating it, *Calvert v. Roberts*, 3 Campb. 343; and the exchange of accommodation acceptances has been deemed a negotiation of those instruments, *Cardwell v. Martin*, 9 East, 190; S. C. nom. *Cardwell v. Martin*, 1 Campb. 79.

*Bills of
Exchange.*

What deemed
issue of a bill.

67. Where immaterial alterations are made merely for the purpose of rectifying mistakes, and carrying into effect the original intention of the parties, they have been allowed without a fresh stamp, as the insertion of the words "or order" in an indorsement of a bill, *Keraw v. Cox*, 3 Esp. 246; so altering the date of a bill, which by mistake had been dated on a corresponding day of the preceding month, instead of the day when drawn, *Jacobs v. Hart*, 6 M. & S. 2; S. C. 2 Stark. 45; but in such cases the alteration is admissible only where it is made in consequence of a mistake, and contrary to the original intention of the parties, not where it is made in consequence of an afterthought, *Knill v. Williams*, 10 E. 431; so on the same principle, any alteration in the date, sum, or time of payment, the insertion of words, rendering negotiable an instrument which before was not so, has been held to be a material alteration, and as such making a new instrument that required a new stamp, *Bowman v. Nicoll*, 1 Esp. 81; S. C. 5 T. R. 537; *Walton v. Hastings*, 4 Campb. 223; S. C. 1 Stark. 215; *Outhwaite v. Luntley*, 4 Campb. 79.

Nature of the
alteration of a
bill.

5. Amount of Stamp.

68. The amount of the stamp upon a bill of exchange, under the statute 55 G. 3. c. 184, depends upon the date upon the face of the bill, not on the time it was actually drawn; and therefore the circumstance of its being post dated, and thereby made due more than two months after it was first drawn, is immaterial, and does not make a larger stamp necessary, *Peacock v. Murrell*, 2 Stark. 558, recognized *Duck v. Braudryll*, M'Clel. 235; see also *Upstone v. Marchant*, 2 B. & C. 10; S. C. nom. *Upston v. Marshall*, 3 D. & R. 198. The words "date" and "sight" are not synonymous; in the one case the time begins to run from the date, in the other, not until the presentment after sight, *Sturdy v. Henderson*, 4 B. & A. 592.

In respect of
the date.

69. The stamp duty is payable upon the sum actually due, not upon what may become due for the use of the money, *Pruessing v. G*, 4 B. & A. 204; see further, Dig. p. ii. tit. BILLS (EXCHANGE); iii. tit. STAMPS.

In respect of
the sum.

*Bills of
Exchange.***Contents of the
subdivision.**

IV. CONSIDERATION.

70. Under this head may be considered—1. The proof of the consideration; 2. The nature of the consideration; 3. The failure of consideration; 4. The illegality of the consideration.

1. *Proof of Consideration.***Consideration
presumed to be
good.**

71. A bill of exchange is presumed to be made upon a good consideration, and the defendant is not at liberty to put the question on proof of the consideration which he gave for it, unless the defendant can make out a *prima facie* case against him by showing that the bill was obtained by fraud or force, *Collins v. Martin*, 1 B. & P. 648; *Duncan v. Scott*, 1 Campb. 100; *R. v. Headfort* (1802) 2 Campb. 574, recognized in *Heath v. Sansom*, 2 B. & Ad. 2; also *Wells v. Masterman*, 2 Esp. 731; *Shirreff v. Wilks*, 48; *Gill v. Cubitt*, 3 B. & C. 466; and formerly it was necessary to give the plaintiff notice to prove consideration, but the practice is otherwise now, *Heath v. Sansom*, *ub. sup.*

2. *Nature of the Consideration.***What a good
consideration.**

72. An acceptance given by one man to another is a good consideration for a promise to accept another bill, *Rose v. Sims*, 1 B. & Ad. 521; so a previous debt, due before a bankruptcy, held to be good consideration, *Brix v. Braham*, 1 Bing. 281; S. C. 10 Moore, 261; but an intention to evade the legacy duty will not be good consideration, *Holliday v. Atkinson*, 5 B. & C. 501; 8 D. & R. 163.

3. *Want of Consideration.***Effect of want
of consideration.
Between imme-
diate parties.
Between remote
parties.**

73. In actions between immediate parties, as between the drawer and payee, the want of consideration may be gone into and relied on as a defence to the action, *Puget de Bras v. Forbes*, 1 Esq. 101; but not so as between the drawer and indorsee, because, as it is said, "this would be enabling either of the original parties to assent to fraud," per Ashurst, J., *Lickbarrow v. Mason*, 2 T. R. 71; though it is no defence to an action by an indorsee for value, that the acceptor received no value, *Collins v. Martin*, 1 B. & P. 651.

**Failure of con-
sideration.**

74. A consideration may be good at the time when the instrument is drawn, but it may afterwards fail; and the defendant, in such a case, will stand in the same situation as if there had been a total failure of consideration from the commencement, *Grew v. Bevan*, 3 B. & C. 1147; and if there be a partial failure, there may, in some cases,

reduction to the extent of the failure, Bayl. 495, 5th ed.; but where the extent of the failure involves a question of unliquidated damages, it seems that the defendant's only remedy is by a cross action, *Obbard Betham*, Mood. & Malk. 483.

*Bills of
Exchange.*

75. If a party, as between himself and his indorser, take a bill on a good consideration, he may have his remedy against the prior parties, and it is no defence to the action that such parties have respectively put their names to the instrument without consideration, *Smith v. Knox*, 3 Esp. 47; *S. P. Charles v. Marsden*, 1 Taunt. 224; and if the defendant received no value, and the party to whom he indorsed the instrument transferred it to the plaintiff for no value, the latter cannot sue the defendant thereon, *Collins v. Martin*, *ub. sup.*

Parties liable
for want of con-
sideration.

4. *Illegality of Consideration.*

76. Whenever a contract is founded on an illegal consideration, a bill given in respect of the agreement is void between such of the parties to the instrument as were concerned in the illegal bargain, *Binson v. Bland*, 1 Bl. 256; *S. C.* 2 Burr. 1077; and the illegality of consideration may be shewn by parol evidence, although in other cases parol evidence is inadmissible to establish that an instrument has been made upon any consideration inconsistent with that which is expressed, *Ridout v. Briston*, 1 Cr. & J. 231, recognizing *Ranson Walker*, 1 Stark. 361. If the consideration be illegal by statute, the instrument so taken will be void in toto, although the consideration may be valid as to a part of the security, *ib.*; see also *Scott v. Gilre*, 3 Taunt. 226, *sed secus*, as it seems where several distinct bills are taken, then some of the bills shall be applied to the good debt, *ibner v. Richardson*, cited Bayl. Bills, 516, n. 66, 5th ed. As to the illegality of consideration under the Gaming Acts, see Dig. p. iii. tit. GAMES; under the Stock-jobbing Acts, p. iii. tit. STOCKS; under the Usury Acts, p. iii. tit. USURY.

Bill void for
when.

V. TRANSFER AND INDORSEMENT.

7. Bills of exchange, being *choses in action*, are, by the rule of common law, not properly assignable; but in favour of commerce they form an exception to the rule, and are, by the custom of merchants, assignable to a third person, not a party to the original contract, so as to vest in the assignee a right of action in his own name. Under this head may be considered—1. What instruments are transferable, and how; 2. Transfer by indorsement; 3. Transfer by delivery.

Bills assignable
though choses
in action.

*Bills of
Exchange.*1. *What Instruments are transferable, and how.*Bills payable to
order, &c.

78. Bills payable to order are negotiable, *Hill v. Lewis*, 1 Salk. 132; so if payable to bearer, *Grant v. Vaughan*, 1 Bl. 485; S. C. 5 Burr. 1516; and where these words are omitted, the bill is not transferable, that is, not so as to charge the acceptor or indorser, *Hill v. Lewis*, *ub. sup.*; but if a bill be once indorsed, and in the indorsement the words "to order" are omitted, it is nevertheless good to make the indorser chargeable to his indorsee, *Hill v. Lewis*, *ub. sup.* An injunction will lie to restrain the negotiation of a bill void in its creation, *Lloyd v. Gurdon*, 2 Swanst. 186.

Modes of trans-
fer.

79. Bills of exchange may be transferred two ways; that is to say, bills payable to order may be assigned by a writing on the bill, called an indorsement; and bills payable to bearer, by mere delivery.

2. *Bills transferable by Indorsement.*What compre-
hended under
indorsements.

80. Under this head may be considered—1st, By whom and to whom indorsements may be made; 2d, Effect of indorsement; 3d, Time of indorsement; 4th, Proof of indorsement.

Indorsement by
agents.

81. [1st. *By whom and to whom Indorsements may be made.*] From the fact of a confidential clerk having indorsed bills, the jury may infer a general authority to indorse, *Prescott v. Flynn*, 9 Bing. 19; S. C. 2 M. & Sc. 18.

Indorsement by
executors and
administrators.

82. There is no difference whether an indorsement be made by the party himself or his representative, *Watkin v. Maule*, 2 J. & W. 243; and where an administratrix indorsed a bill, the indorsee, in an action against her, was not obliged to make proof of the letters of administration, *Ranlinson v. Stone*, 3 Wils. 1. A mere indorsement by one of two executors to enable the other to receive the amount of the bill, is not sufficient to charge him that does not receive the money, *Honey v. Blakeman*, 4 Ves. 608.

Or by partners.

If a bill be drawn by two, "payable to us or our order," and subscribed by both, it will have the effect of making them partners, though not in partnership, to the extent that the indorsement by one of them will be valid, *Carrick v. Vickery*, 2 Dougl. 653, n.; see also *Jones v. Radford*, 1 Campb. 83, n.

Indorsement by
bankrupt or his
assignees.

83. In case of bankruptcy, the property in a bill of exchange must be transferred by the indorsement of the assignees, *Abel v. Sutton*, 3 Esp. 108; see also *Ramsbottom v. Lewis*, 1 Campb. 280.

Indorsement by
a married
woman.

84. A bill indorsed by a feme covert, with consent of her husband, is binding on him, and will pass the interest to the indorsee, *Prestwick*

Marshal, 7 Bing. 565; S. C. 5 M. & P. 513; S. C. 4 C. & P. 94; see further as to parties, *ante*, sect. 8.

*Bills of
Exchange.*

85. A bill of exchange may be indorsed *ad infinitum* until it is paid by or discharged on behalf of the acceptor, *Callow v. Lawrence*, 1 M. & S. 95. But where a bill is indorsed to another, and deposited with him as a trustee, he holds it subject to the trust, and if he indorse it over in breach of trust, the indorsee acquires no right thereby, *Evans v. Kymer*, 1 B. & Ad. 528; and where a bill was lodged in a banker's hands to be applied to a particular purpose, but he became bankrupt without having so applied it, held that the same was claimable from the assignees, *Ex parte Aiken*, 2 Madd. 192.

Indorsement to
persons gene-
rally.

To trustee.

86. Where a bill was indorsed to a party who was dead, but of whose death the indorser was ignorant, the interest was held to pass to the executor, who might sue for it in his character as such, *Murray v. E. I. Company*, 5 B. & A. 216; see further as to parties to bills, *ante*, sect. 5, *et seq.*; for a bare indorsement, without other words purporting an assignment, works no change of property, *Lucas v. Haynes*, 1 Salk. 130; and the holder cannot recover against the acceptor, *Trimby v. Vignier*, 1 Bing. N. C. 151; S. C. 4 M. & Sc. 605.

Indorsement to
executor.

87. [2d. *Effect of Indorsement.*] A bill with a blank for the payee's name is not a legal instrument until filled up, *R. v. Randall*, Bayl. Bills, 31, 5th ed.; but it may be filled up by a *bonâ fide* holder with his own name, and it will bind the drawer, *Crutchley v. Clarence*, 2 M. & S. 90, if he can show that he came regularly in possession of it, *Crutchley v. Mann*, 5 Taunt. 529; S. C. 2 Marsh. 29; and a bill may be declared on in that form, *Atwood v. Griffin*, Ry. & Mood. 25; S. C. 2 C. & P. 368. "An indorsement in blank gives a joint right of action to as many as agree to sue on the bill," *Ord v. Portal*, 1 Campb. 239; and see *Lowe v. Copestake*, 3 C. & P. 300; *Machell v. Kinnier*, 1 Stark. 499.

Indorsement of
bill in blank.

88. Where an indorsement is in blank, the holder may overwrite what he pleases, *Edie v. E. I. Company*, 1 Bl. 297; 2 Burr. 1216; and where a bill indorsed in blank was delivered to B., and he overwrote "pay the contents to C.," without subscribing his own name, held that he was not liable to C. as indorser, *Vincent v. Horlock*, 1 Campb. 442.

Indorsement
may be over-
written, in what
manner.

89. The transfer of a bill of exchange by special indorsement is similar in effect to the making a new bill, the indorser being in the nature of a new drawer, *Skinn.* 411; 1 Atk. 282; 2 Burr. 674; 3 East, 482; but a special indorsement does not transfer the property in the bill until delivery, *R. v. Lambton*, 5 Price, 428; an indorser

Special indorse-
ment.

- Bills of Exchange.* — is, however, bound by his indorsement, although the bill is *parte Clarke*, 2 B. C. C. 230.
- Indorsement after maturity.** 90. [3d. *Time of the Indorsement.*] An indorsement may be made even before the bill itself, *Russell v. Langstaffe*, 1 Dougl. 48; but it may be made even after a bill is due; but this is a circumstance which may reasonably excite suspicion, *Brown v. Davies*, 801. "After a bill is due, it comes disgraced to the indorsee; it is his duty to make inquiries concerning it. If he takes it, he gives a full consideration for it, he takes it on the credit of the indorser, and subject to all the equities with which it may be encumbered," *per* Lord Ellenborough, C. J., *Tierson v. Francis*, 1 Campb. 19; but the assignee of an overdue bill was held not to be bound by an infirmity in the title of an antecedent party, where his immediate assignor might have maintained an action, *Chalmers v. Campbell*, 1 Campb. 388.
- Indorsement after bill is paid.** 91. If a bill is paid and afterwards indorsed before it becomes a valid instrument in the hands of a *bonâ fide* indorsee, *Bridge v. Manners*, 3 Campb. 194; but it cannot be indorsed after it has been once paid, if it would make part of a bill who would otherwise be discharged, *Beck v. Robley*, cited in *Bills*, 125, 5th ed.; 1 H. Bla. 89, n.; see also *Bartrum v. P. & D.* 207; S. C. 9 Ad. & Ell. 275.
- Indorsement after act of bankruptcy.** 92. In every action by an indorsee against an acceptor, it is a defence that the indorsement was made after an act of bankruptcy of the indorser, *Pinkerton v. Adams*, 2 Esp. 611; unless a party has to have indorsed and omitted so to do, his indorsement is still good after bankruptcy held to be good, *Smith v. Pickering*, cited in *N. P. C.* 40, 4th ed.
- What indorsement to be proved.** 93. [4th. *Proof of Indorsement.*] The acceptance of a bill is merely the drawing, not the indorsement; therefore if a bill is drawn and indorsed by procuration, in an action by the indorsee against the acceptor, the indorsement by procuration must be proved, *Yarrow v. Yarrow*, 7 Taunt. 455; S. C. 1 Moore, 150; but in an action against the indorser, it is not necessary to prove any indorsement prior to the defendant's, *Crutchlow v. Parry*, 2 Campb. 11; the payee of a bill deliver it with his name indorsed on it to the defendant, no proof is required of the handwriting of the indorsement, *Thompson, Ry. & Mood*. 403.
- Proof of title to a bill.** 94. In order to derive a title to a bill of exchange payable to the indorsee it is necessary for the indorsee in an action against the acceptor to prove the handwriting of the payee or first indorser, *Smith v. T. R.* 654; for an indorsement by a person of the same name

the payee will not confer a title, and "such indorsement," if made with the knowledge that he is not the person to whom the bill was made payable, is a forgery, and no title can be derived through a forgery, *per Ashurst, C., Mead v. Young*, 4 T. R. *per* three justices, Kenyon diss.

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Exchange.*

As to the form of the indorsement, see *ante*, sect. 55; as to the liability of the indorser, see *ante*, sect. 20; as to notice to the indorser, see *post*, sect. 144.

3. Bills transferable by Delivery without Indorsement.

95. Bills payable to bearer, or bills payable to order, if only indorsed in blank, pass by delivery; and if an assignee take them, without any knowledge of defect of title, *bonâ fide* and for a valuable consideration, such assignee is intitled to payment, *Boehm v. Sterling*, 7 T. R. 427; *sed secus* if he has notice of such defect, *ib.*; and this applies particularly to bills payable after sight or after date, if they are overdue, see *ante*, sect. 90; also *post*, as to bills lost or otherwise, sect. 158.

What bills pass by delivery.

96. If a holder receive from a drawee a second note, and get it discounted in order to provide for the first, there is a sufficient transfer to him of the second bill to enable him to retain the proceeds, *Valsh v. Tyler*, 2 Stark. 288; so if A. employs B. to get bills discounted for him, and B., in order to effect the discounting, indorses them, held that A.'s estate must relieve B.'s liability incurred by the indorsement, *Ex parte Robinson*, Buck, 113; but the mere discounting a bill, without the indorsement of the party who receives the money, does not give the holder of the bill any claim against such party, *Ex parte Roberts*, 2 Cox, 171.

What is a sufficient transfer by delivery.

97. If a bill be payable to A. or bearer, and A. delivers it over for money received, this is a sale of the bill, and the seller does not become a new security, *Bank of England v. Newman*, 1 Lord Raym. 42; recognized in *Emly v. Lye*, 5 East, 7; so if a bill be delivered without indorsement, not in payment of a pre-existing debt, but by way of exchange for goods or other bills, such a transaction is held to be a sale of the bill by the party transferring it, and a purchase of the instrument, with all risks, by the transferee, *Fenn v. Harrison*, 1 T. R. 759; therefore if the seller became a bankrupt, and the bill was dishonoured, held, that the vendee could not prove the amount under the commission, *Ex parte Shuttlenworth*, 3 Ves. 368.

A sale not a transfer.

VI. ACCEPTANCE.

98. Acceptance in its ordinary sense signifies an engagement by

Definition of the term.

*Bills of
Exchange.*

Division of the
subject.

the drawee to pay the bill when due, *Clark v. Cock*, 4 East, 72. Under this head may be considered—1, By whom to be given; 2, Mode of giving; 3, Terms and extent of the acceptance; 4, Effect of an acceptance in evidence; 5, Acceptance *supra protest* for honour. As to the liability of the acceptor, see *ante*, sect. 23; as to the form of the acceptance, see *ante*, sect. 51; as to the presentment for acceptance, see *post*, sect. 120, *et seq.*; as to the notice for non-acceptance, see *post*, sect. 133, *et seq.*

1. *By whom an Acceptance may be given, or the contrary.*

Not to be given
by *feme covert*
or infant &c.,
but by partners
or agents.

99. An acceptance given by a *feme covert* or infant is absolutely void; but an acceptance by one partner may bind the firm, and so an agent may accept for his principal, if he do it in the proper form, see further, *ante*, sect. 6, *et seq.* There cannot, however, be two separate acceptors to the same bill, so as to make them jointly responsible; where therefore two parties accepted a bill, but one of them was only a surety, it was held that the defendant's undertaking was only collateral, and ought to have been declared upon as such, *Jackson v. Hudson*, 2 Campb. 4; and no one can be liable as acceptor except the person to whom the bill is addressed, *Polhill v. Walter*, 3 B. & Ad. 114; and therefore where a person, not having authority as an agent, accepted a bill for another, his acceptance was held void, but he was held liable in damages to the party damnified, *ib.*; but this rule does not apply to acceptances *supra protest for honour*, *ib.*, and see further *post*, sect. 109. Where a bill is drawn upon several persons not partners, it should be accepted by all, or it may be treated as dishonoured, although it will bind such as do accept, *Marius*, 16.

Not by persons
not parties.

Acceptance for
honour.

Acceptance by
persons not
partners.

2. *Mode and Time of giving an Acceptance.*

Parol accept-
ances, &c.

100. Before the 1 & 2 G. 4, c. 78, s. 2 [see Dig. p. ii. tit. BILLS (EXCHANGE)], an acceptance of an inland bill might be by parol, *Lumley v. Palmer*, 2 Str. 1000; S. C. 7 Mod. 216; S. C. Cas. Temp. Hardw. 74; or by collateral writing, *Powel v. Monnier*, 1 Atk. 611; but by that statute an acceptance must be in writing on the bill itself; yet an unsigned acceptance written on the face of a bill is not made invalid by the statute, and it is a question for the jury to determine whether it was intended to operate as an acceptance, *Dufour v. Oxenden*, 1 Mood. & Rob. 90; but in an action against the acceptor, it need not be averred that the acceptance was in writing, *Chalie v. Belshaw*, 6 Bing. 529; S. C. 4 M. & P. 275. An acceptance in blank is sufficient to charge the acceptor when the bill is afterwards drawn in pursuance of his authority. The 1 & 2 G. 4,

In writing under
the 1 & 2 G. 4,
c. 78.

Acceptance in
blank.

78, does not affect such acceptances, *Leslie v. Hastings*, 1 Mood. Rob. 119; see further *supra*, sect. 100.

*Bills of
Exchange.*

101. A mere acceptance, without delivery to the holder, is not sufficient to make the contract binding, *Cox v. Troy*, 5 B. & A. 474; C. 1 D. & R. 38; therefore before a bill is issued, an acceptance may be cancelled or revoked, *ib.*; see further *ante*, sect. 24.

Acceptance
without deli-
very.

102. The statute does not extend to foreign bills of exchange, and Ireland is for this purpose to be considered as a foreign country, even since the Union, *Mahoney v. Arlin*, 2 B. & Ad. 478; therefore the old law is still applicable to such bills; accordingly it has been held that a promise to accept would amount to an acceptance, *Pellans v. Mitchell*, 3 Burr. 1663; and detaining a bill that has been presented for acceptance has been deemed an acceptance, *Harvey v. Martin*, Bayl. Bills, 5th ed. 149; and this applies now particularly to foreign bills, *Clarke v. Cock*, 4 East, 57; *Wynne v. Raihes*, 5 East, 514; S. C. 2 Smith, 98; *Mendizabal v. Machado*, 6 C. & P. 8; but words that were ambiguous were held not to amount to an acceptance, as "there is your bill, it is all right," *Powell v. Jones*, 1 p. 17; or "the bill should have attention," *Rees v. Warwick*, 2 B. & A. 113; so the parol acceptance of a bill drawn at Gibraltar, unsatisfactorily proved, is binding on the acceptor, *Canepa v. Lanos*, Knapp, 276.

Foreign bills
not within the
statute.

What amounts
to an accept-
ance.

103. Regularly a bill should be accepted before the day on which it ought to be paid, yet an acceptance after that day will bind the acceptor, *Jackson v. Pigott*, Carth. 459; *Wynne v. Raihes*, *ub. sup.*, recognizing *Mutford v. Walcot*, 1 Lord Raym. 574; S. C. 1 Salk. 9; so a bill may be accepted before it is drawn and indorsed, and will charge the acceptor to the extent warranted by the stamp, *Multz v. Astley*, 2 Bing. N. C. 544; S. C. 2 Scott, 815; S. C. 7 C. & P. 99.

Time of accept-
ing.

Before bill
drawn.

3. Terms and Extent of an Acceptance.

104. An acceptance may be either absolute or qualified, see *ante*, sect. 52. It is qualified when the drawee undertakes to pay the bill in any other manner than according to the tenor and effect thereof; qualified with a condition, it is called a conditional acceptance, see further as to the form *ante*, sect. 51—54. The holder of a bill may insist on an absolute engagement from the drawee, and may consider a qualified acceptance as a nullity, and protest for non-acceptance, *Proat v. Matthews*, 1 T. R. 182; but he is precluded from afterwards considering it as an acceptance, *ib.* If the holder accepts the qualified acceptance, he must give notice of the nature of the accept-

Absolute or
qualified accept-
ance.

- Bills of Exchange.* ance to the previous parties, or they will be discharged, *Sebag v. Abithol*, 4 M. & S. 466.
- Conditional acceptances. 105. Whether an acceptance be conditional or not is a question of law. A mere verbal condition is inadmissible in evidence to qualify the absolute written engagement even between the original parties, *Hoare v. Graham*, 3 Campb. 57; but it seems that an acceptance might be rendered conditional by a contemporaneous writing, though not against a *bonâ fide* holder ignorant of the existence of such writing, *Bowerbank v. Monteiro*, 8 Taunt. 846; but see 1 & 2 G. 4, c. 78, s. 2; Dig. p. ii. tit. BILLS (EXCHANGE). A conditional acceptance becomes available on the performance of the condition, but not before, *Pierson v. Dunlop*, 2 Cowp. 571; *S. P. Miln v. Prest*, 4 Campb. 393; *S. C. Holt*, N. P. C. 180.
- Condition to be performed. 2; Dig. p. ii. tit. BILLS (EXCHANGE). A conditional acceptance becomes available on the performance of the condition, but not before, *Pierson v. Dunlop*, 2 Cowp. 571; *S. P. Miln v. Prest*, 4 Campb. 393; *S. C. Holt*, N. P. C. 180.

4. Effect of an Acceptance in Evidence.

- What acceptance admits. 106. By acceptance the drawee admits the handwriting of the drawer, so that in an action against him it is not necessary to prove the handwriting, *Wilkinson v. Lutwidge*, 1 Stra. 648; but it seems not to be so conclusive as to prevent him from shewing the contrary, *Smith v. Sear*, N. P. C. 270; so the handwriting, however, of the first indorser must be proved, for the acceptor is not supposed to look further than the handwriting of the drawer, *Smith v. Chester*, 1 T. R. 654; and an acceptance of a bill drawn by procuration is an admission of the agent's authority to draw, but not of his authority to indorse, *Robinson v. Yarrow*, 7 Taunt. 455; *S. C. J. B. Moore*, 150; but where the drawer is a fictitious person, the acceptor's undertaking is that he will pay to the order of the person who signed as drawer, *Cooper v. Meyer*, 10 B. & C. 468.
- Evidence that effects are in acceptor's hands, when. 107. Acceptance is *primâ facie* evidence that acceptor has effects of drawer's in his hands, *Vere v. Lewis*, 3 T. R. 182; and is an undertaking by him to pay the bill, *Parminter v. Symons*, 1 Wils. 185; *S. C. in error*, 2 B. P. C. 43; see further *ante*, as to the consideration, sect. 70, *et seq.*
- Proof of acceptance. 108. In an action by a payee or indorsee against the acceptor, the plaintiff must prove the handwriting of the person whose name appears as the acceptor, *Memot v. Bates*, Bull. N. P. 171 b; *Nelson v. Whittall*, 1 B. & A. 19; but proof of acceptance by one partner of a bill drawn upon a firm is sufficient to bind the firm, *Porthouse v. Parker*, 1 Campb. 82; yet in an action by an indorsee against a drawer, proof that the bill purported to have been accepted when indorsed to plaintiff does not render it unnecessary to prove an actual acceptance, *Smith v. Bellamy*, 2 Stark. 22, n.; and when made payable

by acceptor at a particular place not his residence, proof of presentment at the place is not sufficient without proof of the acceptor's handwriting, *Hott v. Squire*, Ry. & Mood. 282; see also *Sedgwick v. Jager*, 5 C. & P. 199; *Warren v. Anderson*, 8 Scott, 384; or that it was accepted by his authority, *Goldstone v. Tovey*, 6 Bing. N.C. 98; S.C. 8 Scott, 394. Where an acceptor had once acknowledged the acceptance to be his handwriting, and the plaintiff had thereby been induced to take the bill; held, that he could not set up as a defence that the acceptance was a forgery, *Leach v. Buchanan*, 4 Esp. N. P. C.

*Bills of
Exchange.*

5. *Acceptance supra Protest for Honour.*

109. When a drawee either cannot or will not accept, any person may, to save the credit of the drawer or other party, accept the bill for the honour of such party; and this he does by subscribing "Accepted *supra protest* in honour of A. B. &c." or as is more usual "Accepts S. P." Such a bill is called an "acceptance *supra protest*," because a protest should be made previous to either acceptance or payment for honour, *Vandervall v. Tyrrell*, 1 M. & M. 87; Bayl. Bills, 180, 5th ed. The name of the party, in whose favour such acceptance is made, is usually mentioned; but if it be not, it is considered to be made for the honour of the drawer, Beawes, 39.

Definition.

110. Any person may accept a bill *supra protest*, even the drawee himself, although he may refuse to accept it generally, Beawes, 33; and the same bill may, contrary to the general rule, see *supra*, sect. 9, be accepted by more than one person, as where a bill has been accepted by one person for the honour of one party, it may be accepted by another person for the honour of another, Beawes, 42; *Jackson v. Hudson*, 2 Campb. 447.

Who may
accept for
honour.

111. An acceptance for honour enures to the benefit of all the parties subsequent to him for whose honour it was made, Beawes, 33; Marius, 1; Bayl. Bills, 176, 5th ed.; it is however but a conditional undertaking to pay if the drawee do not, *Hoare v. Cazenove*, 16 East, 391; an order therefore to complete the liability of the acceptor for honour, the bill must be presented for payment when it falls due, notwithstanding the former refusal of the drawee, who may possibly in the mean time have received assets, *Williams v. Germaine*, 7 B. & C. 177; and it was held necessary that presentment to the drawee for payment ought to be averred in the declaration, *ib.*; and where the acceptance was special, as thus, "Accepted by B. in honour of the payee, if regularly protested and refused when due," it was held absolutely necessary, before any claims could be made upon the

Effect of acceptance for honour.

Liability of
acceptor for
honour.

Presentment
to drawee.

Bills of
Exchange.Presentment
to acceptor.Remedy for
acceptor for
honour.

acceptor for honour, to present the bill to the drawee at the place where he had a domicile, *Mitchell v. Baring*, 10 B. & C. 4; S. C. 1 Mood. & Malk. 381. As to the time when bills accepted for honour should be presented to the acceptor for honour, &c., see 6 & 7 W. 4. c. 58; Dig. p. iii. tit. **BILLS (EXCHANGE).**

112. The acceptor for honour has his remedy for any damages incurred by his acceptance, not only against the party for whose honour the acceptance is made, but also all parties antecedent to him, whom that party might have sued, *Beawes*, 47; but where a bill has been protested for better security, and both the drawer and the acceptor become bankrupt, the acceptor for honour of the drawer must first resort to the drawer's estate, *Ex parte Wackerbath*, 5 Ves. 574; and where a bill has been accepted for the accommodation of the drawer, a person taking up a bill for the honour of the drawer has no right against the acceptor, who had no effects of the drawer's in his hands, *Ex parte Lambert*, 13 Ves. 179.

VII. PAYMENT.Contents of the
division.

113. Under this head may be considered, 1. To whom payment ought to be made; 2. When to be made; 3. Mode of payment; 4. What amounts to payment. As to presentment for payment, see *infra*, sect. 125 *et seq.*; as to notice for non-payment, see *post*, sect. 133; as to protest for non-payment, see *post*, sect. 148 *et seq.*; as to enforcing and resisting payment, see *post*, sect. 158; as to the place where made payable, see *ante*, sect. 40.

1. To whom Payment should be made.

To the holder.

114. Payment must be made to the holder or real owner of the bill, otherwise it is no discharge to the acceptor; therefore where A. drew a bill on defendant, which the latter accepted, and A. then indorsed it to the plaintiffs, his bankers, the bill, on being presented for payment, was dishonoured, but was afterwards paid by the defendant to A.; yet not being delivered up by the plaintiff, they brought an action on the bill against the defendant, the acceptor: held, that the payment to A. would not of itself have discharged the defendant, the plaintiffs having been at that time the holders, had not the plaintiffs themselves, in their accounts with the parties, treated the bill as having been paid, *Field v. Carr*, 5 Bing. 13; S. C. 2 M. & P. 46. If the holder be dead, payment should be made to his personal representative, even under a forged probate, before it is repealed, *Allen v. Dundas*, 3 T. R. 125; and *bonâ fide* payments by a bankrupt before fiat will be protected by the Bankrupt Acts, notwithstanding a prior

of bankruptcy, if the payee had no notice thereof, see Dig. p. ii. BANKRUPT; p. iii. tit. INSOLVENCY.

*Bills of
Exchange.*

115. If a bill be lost or stolen, payment to the finder or thief will be a discharge to the acceptor, if the payment be made in the usual course of business, and not under suspicious circumstances, *Gill v. Bitt*, 3 B. & C. 466; S. C. 5 D. & R. 324, overruling *Lawson v. East*, 4 Esp. 56; the question of *mala fides* is for the consideration of the jury, *Peacock v. Rhodes*, 2 Dougl. 636; see further, as to the payee, *ante*, sect. 36.

To the wrong-
ful holder.

2. Time when Payment is to be made.

116. A bill, whether inland or foreign, ought to be paid on demand within business hours on the day it falls due, otherwise the holder is intitled to treat it instantly as dishonoured, *Burbridge v. Manners*, 3 Campb. 193; but if payment be made within the day, it will be sufficient, and the notice of dishonour, if given, becomes of no avail, *Hartley v. Case*, 1 C. & P. 556. A plea of tender after the date of payment is insufficient, *Hume v. Petloe*, 8 East, 168; *sed secus* as to the drawer or indorser, *Walker v. Barnes*, 5 Taunt. 240; S. C. 10 Marsh. 36. A payment after action brought will not prevent the holder from proceeding for his costs, *Toms v. Powell*, 6 Esp. 40; S. C. 7 East, 536.

Payment on
the day.

117. Payment of a bill before it is due does not extinguish the debt; and if afterwards indorsed over, it is a valid security in the hands of a *bonâ fide* indorsee, *Burbridge v. Manners*, *ub. sup.*

Payment before
bill is due.

3. Mode of Payment.

118. It seems to be now settled (though at one time doubted) that a part payment by a drawer will discharge the acceptor *pro tanto*, *Bacon v. Searles*, 1 H. Bl. 88, overruling *Johnson v. Kennion*, 2 Wils. 262; and where the drawer pays the whole, the acceptor is discharged, *ib.* Indorsements on bills of part payments by the holder are now, under Geo. 4, c. 14, s. 3, not evidence for him in answer to the Statute Limitations, see Dig. p. iii. tit. LIMITATIONS.

Part payment.

4. What amounts to a Payment.

119. Credit given to the holder of a bill by a party ultimately liable, is tantamount to payment, *Atkins v. Owen*, 4 Nev. & Man. 123; and it seems that a banker will not be considered guilty of negligence in giving up bills of exchange to the acceptor upon receiving a check from a banker for the amount, although it turn out that such check is dishonoured, *Russell v. Hankey*, 6 T. R. 12; but the drawer or

What amounts
to payment.

VIII. PRESENTMENT.

Kinds of presentment.

120. Presentments are of two kinds; namely, 1. acceptance; 2. Presentment for payment. As to acceptance or non-payment, see *post*, sect. 133 *et seq.*

1. *Presentment for Acceptance.*

What bills must be presented.

121. When a bill is drawn payable within a certain time it must be presented to the drawee for acceptance, in time when it is to be paid; but in other cases it is though advisable, to procure an acceptance, as it facilitates the instrument; and where it is expressly drawn, it is said that the holder is bound to present acceptance as soon as possible, *Marius*, 46.

Time of presenting.

There is no fixed time for presenting bills drawn sight; but due diligence must be used so that the bill is presented within reasonable time, *Muilman v. D'Eguino*, 2 H. & N. 401. Whether due diligence has been used is a question of law upon facts, *ib.* In *Hine v. Allely*, 4 B. & Ad. 624 & Man. 433, recognized in *Bucton v. Jones*, 1 Man. & G. 401. The holder went to the place where the bill was addressed, the house shut up,—held, that this was a sufficient presentment. What is a reasonable time is a question for a jury, as in *a foreign as well as an inland bill*, *Mellish v. Rowdon*, 10 C. 2 M. & Sc. 570. So the holder of an inland bill sight is not bound to present it instantly for acceptance, but may put it into circulation, *Fry v. Hill*, 7 Taunt. 397.

The bill ought to be left with the drawee for twenty-four hours until the next day if he require it, *Bellasis v. Hester*, 10 T. R. 281; but if more than twenty-four hours are given, the holder ought to give notice to the antecedent parties, *Ingram v. Smith*, 242. If, while a bill remains with the drawee, it is through his carelessness, he will be responsible; but if the holder, by presenting it, by letting the private marks be known, enables the drawee fraudulently to get possession of it, trover will not lie against the drawee, *Morrison v. Buchanan*, 6 C. & P. 18.

Bills of Exchange.

Bill to be left with drawee.

Liability of parties in case of accident to bill.

The neglect to present a bill for acceptance in due time and proper manner, when presentment is necessary, will discharge the drawer and indorser from liability on the bill, *Cheek v. Roper*, 10 T. R. 281; but where a bill is given in payment of goods sold, which, on presentment, is refused acceptance, the holder is not obliged to present it again, *Hickling v. Hardey*, 7 Taunt. 312; S. C. 1 J. B. 11.

Consequence of neglect to present for acceptance.

2. *Presentment for Payment.*

The matters connected with presentment for payment, and on which the principal questions have arisen, are, 1. The person to whom made; 2. The time when to be made; 3. The place where to be made; 4. Mode of making presentment; 5. Consequence of neglect to make presentment.

Division of the subject.

As to notice, see *post*, sect. 133 *et seq.*

1st. *The Person to whom to be made.*—As a rule, presentment is to be made to the drawee; but if a bill be made payable to the order of a banker's, a presentment there is sufficient, *Bishop v. Chitty*, 10 T. R. 195; so presentment to the banker's clerk at the clearing-house is sufficient, *Reynolds v. Chettle*, 2 Campb. 596; S. P. *Robson v. Chettle*, 2 Taunt. 388; and if the party be dead, it must be made to his personal representative, *Molloy*, bk. ii. c. 10, s. 34; so if a person goes abroad, leaving an agent with power to accept bills, the bills, if accepted, must, when due, be presented to the agent for payment, *Phillips v. Astling*, 2 Taunt. 206.

To whom to be made.

2nd. *Time when to be made.*—A bill need not be presented every day when it becomes due, in order to charge the acceptor, but presentment may be made a few days after, it is sufficient, *Rhodes v.*

To be made on the day when due, or a few days after.

B. & A. 244; but a bill purporting to be payable within a limited time, is not payable until three days after, which are called *days of grace*, *Beawes*, 253; unless such a day was a Sunday or a public holiday; and in that case, by the 39 & 40 G. 3, c. 42; 7 & 8 G. 4, c. 15, s. 2, p. ii. tit. BILLS (EXCHANGE,) it is payable on the second day; otherwise a presentment on the second day is a nullity, *Wiffen v. Wiffen*, 1 Esp. 261. And where a bill is drawn at a certain number

Days of grace. Computation of time.

apply at the house of a merchant or tradesman for accepted bill, *Morgan v. Davison*, 1 Stark. 114; *Barclay v. Bailey*, *ub. sup.*; or at the office of an acceptor, *v. Newnham*, 1 C. & P. 631; but if presentment is to bankers, it must be made within banking hours, *Parsons v. East*, 385, recognized in *Elford v. Teed*, 1 M. & S. 707, presentment being made at six o'clock was held insufficient, *Lefitley v. Mills*, 4 T. R. 170, where the Court refused to allow of banking hours; but a presentment at a banking hour is sufficient, if a person be stationed at the bank to return for answer "no order," *Garnett v. Woodcock*, 5 S. C. 1 Stark. 475.

Bills payable
on demand.

129. A bill on which no time of payment is specified, becomes due immediately on presentment; and the presentment must be made within a reasonable time, *v. D'Eguino*, *ante*, sect. 120.

At residence of
drawee.

130. [3d. *Place where Presentment ought to be made*] If a particular place is mentioned, presentment should be made at that residence of the drawee. If it be made at the address as stated on the bill, and the house be closed, and it be proved in vain in the neighbourhood, held that the bill is dishonoured, *v. Alleley* 1 Nev. & Man. 433.

At place directed
by
drawer.

Where the drawer of a bill payable at a particular place, a presentment there is necessary, and must be proved at the trial, *Hodge v. Hodge* 1 B. & C. 463; and the statute 1 & 2 G. 4, c. 78, which relates to the presentment only, has not altered the liability of the drawer, *Gibson v. Bing* 214; S. C. 2 C. & J. 254. Where a bill was payable by the acceptor at a particular place, it was not settled by the statute 1 & 2 G. 4, c. 78, whether presentment at the particular place was necessary.

At place where
made payable
by acceptor.

Bills of Exchange.

**Presentment
not to be dis-
pensed with,
when.**

Different kinds of notice.

What notice sufficient, or otherwise.

Bill of Exchange. held insufficient. *Hartley v. Case*, 4 B. & C. 339; S. C. 61 505; *Sclarte v. Palmer*, 7 Bing. 629; S. C. 5 M. & P. 475; 1 Bing. N. C. 194. A mistake in describing the bill or parties will render the notice invalid, if it be such as is likely to de mislead, *Beauchamp v. Cash*, 1 D. & R. N. P. C. 3.

Need not be in writing. 135. A notice need not be in writing, *Goldsmith v. Bland*, Bills, 276, 5th ed.; *Housego v. Corne*, 2 M. & W. 343; a sent to the party's counting-house, if he be a merchant, wi usual hours of business, is sufficient, although no person is in ance, *Cross v. Smith*, 1 M. & S. 545; *Bancroft v. Hall*, N. P. C. 476; so a message left at the dwelling-house of a person is sufficient, *Housego v. Corne*, 2 M. & W. *ub. sup.*; ther, *infra*, as to the mode of giving notice.

A verbal message, when sufficient.

2. The Mode of giving Notice.

Personal service not necessary. 136. Personal service of a notice is not necessary, it being u if sent to the counting-house, *Cross v. Smith*, *ub. sup.*; the us By post. safest mode of conveying notice is by post, *Walter v. Hayn & Mood*. 149, recognized and distinguished in *Mann v. Moon Mood*. 249; if there be no post, then the ordinary conveyan be used, *Muilman v. D'Eguino*, 2 H. Bl. 565; and the empl Or other conveyance. of a private agent will suffice, provided he actually give no take steps for that purpose, *Bancroft v. Hall*, *ub. sup.* As evidence which may be required of notice having been giv *Hetherington v. Kemp*, 4 Campb. 194; *Hawkes v. Salter*, 4 715; S. C. 1 M. & P. 750. In the case of a foreign bill, it i cient to send notice by the first regular ship, *Muilman v. D'E ub. sup.*

3. Time when Notice ought to be given.

Within reason- 137. As a rule, notice must be given within a reasonable able time. and although a bill may not require to be presented for acce at all, as a bill payable at a certain time after date, yet, if i sent and dishonoured, notice is requisite, as in the case of no ment, *Roscon v. Hardy*, 2 Campb. 458. What is a reasonab is a question of law, depending on the facts of each case, *Dur Savage*, Holt, 113; S. C. 1 Show. 155. Where parties live Where parties live in different places. ferent places it is sufficient to send off notice of dishonour t following that on which the party receives intelligence of d honour, *Williams v. Smith*, 2 B. & A. 496; where both the live in the same place, notice must be given in time to be recei the course of the day following the day of dishonour, *Bray v. H 5 M. & S. 68*, recognizing *Darbishire v. Parker*, 6 East, 3; it

aid down, "as a rule of practice, that each party in whose hands a dishonoured bill may pass should have one entire day for the purpose of giving notice," per *Ld. Ellenborough, C. J., Bray v. Hadwen, ub. sup.*; and Sunday or any holiday is not to be reckoned as a day for giving notice, *Lindo v. Unsworth*, 2 Campb. 602; and a banker with whom a bill is deposited is, for the purpose of notice, to be considered as a distinct holder, and has a day to give notice to his customer, *Robson v. Bennett*, 2 Taunt. 388; but it lies on the plaintiff to shew that notice has been given in due time, *Lawson v. Sherwood, Stark. 314*. A delay in giving notice of dishonour may be excused by the holder's ignorance of the indorser's residence or place of business, *Bateman v. Joseph*, 12 East, 433; from his absconding or otherwise, *Walwyn v. St. Quinton*, 1 B. & P. 652; *Cross v. Smith*, 5 M. & S. 545; provided that the holder can shew that he has used due diligence to discover where the party was to be found, *Bateman v. Joseph, ub. sup.*; and what is due diligence was held to be a question for the jury, *ib.*, overruling, as it seems, on that point, *Tindal v. Brown*, 1 T. R. 167; *Sturges v. Derrick*, Wightw. 76; but to initiate the inquiry the day after intelligence of the dishonour is sufficient, *Browning v. Kinnear*, Gow, 81.

*Bills of
Exchange.*

Burden of proof
lies on plaintiff.

Delay, when
excused.

4. The Person by whom Notice should be given.

138. Notice of dishonour of a bill can only be given by some party to the instrument, the object of the notice being to apprise the person addressed that the bill has been dishonoured, and also to inform him that the holder looks to him for payment, *Tindal v. Brown*, 1 T. R. 167; he need not be an actual holder at the time, provided that, as a party, he may be intitled to call for payment, *Chapman v. Keane*, 3 M. & Ell. 193; but see *Ex parte Barclay*, 7 Ves. 597; and notice given from the acceptor himself has been deemed sufficient *Rosher v. Kieran*, 4 Campb. 87; but a stranger is incompetent to give it, *Stewart v. Kennett*, 2 Campb. 177; so notice given by the owner or any other party enures to the benefit of all who stand between that party and the person receiving it, *Wilson v. Swabey*, 1 Stark. 34; *Bayl. Bills*, 254, 5th ed.; and notice may be given by any agent, who holds the bill, as a banker or attorney, in his own name, *Woodhouse v. Lawes*, 2 M. & W. 109.

To be given by
party to instru-
ment.

Need not be
actual holder.

5. The Person to whom Notice should be given.

139. As a rule, when a bill is refused acceptance or payment, notice of such refusal must be given to any party to whom the holder wishes to have recourse, *Lafitte v. Slatter*, 6 Bing. 623; S. C. 4 M. & P.

General rule.

<i>Bills of Exchange.</i>	457; but a person who is not a party to a bill cannot complain of want of notice, unless he can shew that he has been prejudiced thereby, <i>Swinyard v. Bowes</i> , 5 M. & S. 62; therefore the same strictness of proof of notice is not necessary to charge a guarantee as would have been necessary to support an action upon the bill itself, <i>Warrington v. Furber</i> , 8 East, 242. Where parties are jointly liable, notice to one is notice to all, <i>Porthouse v. Parker</i> , 1 Campb. 82.
No notice to one not a party to bill.	
To one of several parties sufficient.	140. Notice to any person in attendance at a counting-house or place of business is sufficient, <i>Crosse v. Smith</i> , 1 M. & S. 554; because it is the duty of a merchant to have some one there in attendance, <i>ib.</i> ; and, therefore, if a counting-house be shut up and no one there, knocking and endeavouring to make one hear is sufficient notice, <i>Home v. Bowes</i> , 16 East, 112; and, on the same principle, notice to the wife of a person, not a merchant, has been deemed sufficient, <i>Housego v. Cowne</i> , <i>ub. sup.</i> ; but notice to a man's attorney is not sufficient, <i>Crosse v. Smith</i> , <i>ub. sup.</i>
Notice to person in attendance.	
Notice in case of bankruptcy.	141. Notice of a dishonoured bill to a bankrupt as drawer, before the choice of assignees, is good, though dishonoured the morning before the meeting; the bankrupt, until assignees are chosen, representing his estate, <i>Ex parte Moline</i> , 19 Ves. 216; S. C. 1 Rose, 308; therefore where the holder of a bill did not give notice of the dishonour to the drawer, or leave it at his house, nor attempt to give notice to his assignees; held, that the bill was not proveable under the commission against the drawer, <i>Rhode v. Proctor</i> , 4 B. & C. 517.
Notice to drawer when necessary or otherwise.	142. When a bill is dishonoured, notice must be given to the drawer, if the holder means to resort to him for payment. A drawer is, however, not discharged by the want of notice, where the bill has passed into the hands of a <i>bonâ fide</i> indorser for value, who had no knowledge of the dishonour, <i>Dunn v. O'Keefe</i> , 5 M. & S. 282. There is also another exception to the rule that want of notice discharges the drawer, when the latter has not effects in the hands of the acceptor at the time when the bill is drawn, <i>Bickerdike v. Bolton</i> , 1 T. R. 405, recognized in <i>Claridge v. Dalton</i> , 4 M. & S. 226; but if the drawer has effects in the drawee's hands at the time the bill was drawn, although such effects were withdrawn before it became due, held, nevertheless, that he was intitled to notice, <i>Orr v. Magennis</i> , 7 E. 359; or at the time when it was presented, <i>Blackman v. Doren</i> , 2 Campb. 503; or if the drawer has effects in the drawee's hands at any time between the drawing of the bill and its becoming due, he is intitled to notice, although he had not any such effects at the time of bill drawn, <i>Hammond v. Dufresne</i> , 3 Campb. 145; S. P. <i>Thackray v. Blackett</i> , <i>ib.</i> 164; but want of effects excuses from the

necessity of presenting for payment as well as of notice of dishonour, *Terry v. Parker*, 6 Ad. & Ell. 507; S. C. 1 Nev. & Per. 752.

*Bills of
Exchange.*

143. Where a bill is accepted payable at a particular place, it is not necessary, in an action against the acceptor, to prove notice of dishonour to him, *Treacher v. Hinton*, 4 B. & A. 413.

Notice to ac-
ceptor not ne-
cessary.

144. If the holder of a bill looks to the indorser for payment, it is incumbent on him to give notice of the dishonour of the bill, otherwise the indorser will not be liable, *Blezard v. Hirst*, 5 Burr. 2672; and if notice of the dishonour regularly circulate back to a distant indorser or to the drawer, he is liable either to his indorser or to the holder; thus, where the holder on the day of dishonour gave notice to the fifth indorser, and the fifth on the following day to the fourth, the fourth on the day after to the third, the third on the next day to the second, and the second on the following day to the first, held, in an action by the second against the first, that due notice had been given, *Filton v. Shepherd*, 6 East, 14, n.; so if the drawer of a bill receives no notice of its dishonour from any person who is a party to it, he is liable upon it to a subsequent indorser, although he had received no notice from him, *Jameson v. Swinton*, 2 Campb. 373; S. C. 2 Taunt. 373. Want of effects in the hands of the drawee does not in the case of an indorser, as in the case of the drawer, render notice of dishonour to the latter unnecessary, *Goodall v. Dolley*, 1 T. R. 12; S. P. *Wilkes v. Jacks*, 1 Peake, 202, 209; but this rule is applicable only to the case of fair transactions; therefore, where the indorser knows that the acceptor is insolvent at the time that he gives the indorsement, he is not intitled to notice, *De Berdt v. Atkinson*, H. Bl. 336; but see *Smith v. Beckett*, 13 East, 187.

Notice to in-
dorser necessary.

Where there are
several indor-
sers.

6. Consequence of Neglect to give Notice.

145. Want of due notice of dishonour discharges the drawer and indorser from all liability, whether on the bill or on the consideration on which the bill was paid, *Bridges v. Berry*, 3 Taunt. 130; and the want of notice is a complete defence to the action; and evidence tending to shew that the defendant was not prejudiced thereby, is inadmissible, except in an action against the drawer who had no effects in the hands of the drawee, *Dennis v. Morrice*, 3 Esp. 158; S. P. *Hill v. Heap*, D. & R. N. P. C. 59. Where there are several indorsers to a bill, and one of them is guilty of laches, that discharges all antecedent parties, *Marsh v. Maxwell*, 2 Camp. 210, n.

Discharge of
drawer &c.

7. Excuse and Waiver of Notice.

146. Death, or any dangerous accident rendering notice impossible, Excusing notice.

<i>Bills of Exchange.</i>	will excuse it, <i>Turner v. Leech</i> , Chitt. 213; so notice need not be given, if the bill is on an insufficient stamp, <i>Cundy v. Marriott</i> , 1 B. & Ad. 699; but destruction of the bill will be no excuse for neglect of notice, <i>Thackray v. Blackett</i> , 3 Campb. 164; nor the insolvency of the acceptor, ib.; <i>Dennis v. Morrice</i> , 3 Esp. 158; nor the fact of his having told the drawer that he would not pay the bill, <i>Baker v. Birch</i> , 3 Campb. 107; nor an agreement between the parties that the instrument shall not be payable till after a certain event, <i>Free v. Hawkins</i> , 8 Taunt. 92; S. C. 1 J. B. Moore, 535; S. C. Holt's N. P. C. 550. As to drawers not having effects in the drawee's hands, see <i>ante</i> , sect. 141.
Waiver of notice.	147. A subsequent promise by the indorser to pay is not a waiver of the objection for want of notice, if made in ignorance that he has been discharged by such neglect, <i>Blezard v. Hirst</i> , 5 Burr. 2670, recognized in <i>Goodall v. Dolley</i> , 1 T. R. 712; <i>Pichin v. Graham</i> , 1 Cr. & M. 728; <i>sed secus</i> , where a party has full knowledge of the circumstances, <i>Lundie v. Robertson</i> , 7 East, 231, recognized in <i>Jones v. Morgan</i> ; and since the new rules, which do not affect the question, in <i>Croxon v. Morgan</i> , 5 M. & W. 5; and as to what is evidence of waiver of the objection, see <i>Hopley v. Dufresne</i> , 15 East, 275; but where an eleventh indorser, discharged by the laches of the holder, paid the bill in his own wrong, held, that he could not recover from the defendant an eighth indorser, or any of the prior parties, who were also discharged, <i>Turner v. Leach</i> , 4 B. & A. 451.
XI. PROTEST.	
Definition of protest.	148. A protest is a minute of the non-acceptance or non-payment of a bill of exchange, drawn up by a notary public, and accompanied by a solemn declaration on the part of the holder against any loss to be sustained thereby; which by the law merchant in the case of foreign bills is an essential part of their constitution, but in regard to inland bills of a certain description and amount, has been rendered necessary only by the 9 & 10 W. 3, c. 17; 3 & 4 Ann. c. 9, s. 4. These statutes do not apply to inland bills payable after sight, <i>Lefley v. Mills</i> , 4 T. R. 170; and the principal and interest are recoverable, although no protest has been made, even in the case of inland bills, to which the statutes apply, <i>Windle v. Andrews</i> , 2 B. & A. 696, recognizing <i>Lumley v. Palmer</i> , 2 Str. 1000; see further Dig. p. ii. tit. BILLS (EXCHANGE).
As to foreign bills.	
As to inland bills.	
Presentment of foreign bills.	149. Foreign as well as inland bills of exchange are usually presented for acceptance to the drawee by the holder or his agent; and if not accepted or paid, foreign bills are sent to a notary public,

so, on the same day, again presents the bill, or causes it to be presented; and, in case of a second refusal, makes a minute, consisting of his initials, the day, month and year, and the reason, if assigned, for the refusal, which is termed *noting*, from which the notary may afterwards draw up a formal protest at his leisure, Bull. N. P. 272. *Noting* is, *per se*, of no legal effect, *Rogers v. Stephens*, 2 T. R. 13; but it is a necessary preliminary to protesting, *Lefley v. Mills*, *sup.*; *Chaters v. Bell*, 4 Esp. 48. It is said in *Lefley v. Mills*, *sup.* that presentment ought to be made by the notary himself and not his clerk; but it seems to be otherwise in practice; and there is no decision on the point, Brooke on the Office of Notary, cited w. N. P. 338, n., 10th ed.

*Bills of
Exchange.*

Noting.

150. If the drawer resided abroad, it was at one time thought that a copy, or some memorial of the protest, ought to accompany the bill in case of dishonour, *Goosebrey v. Meud*, Gilb. Ev. p. 79; Bull. N. P. 13; but this case was overruled in *Cromwell v. Hynson*, 2 Esp. 1; and *Robins v. Gibson*, 3 Campb. 334; S. C. 1 M. & S. 288, in which cases are recognized in *Goodman v. Harvey*, 4 Ad. & L. 870; 6 Nev. & Man. 372.

Notice of protest.

151. Besides the protest for non-acceptance and non-payment, the holder may protest for better security; that is, where the acceptor becomes insolvent, or where his credit is openly impeached before the bill falls due, the holder causes a notary to demand better security; and, on refusal, gets the bill protested, and notice sent to an antecedent party; but he cannot bring any action until the bill falls due, *Arrius*, 27; *Anon.* 1 Ld. Raym. 743.

Protest for better security.

152. Where a bill is either accepted or paid for honour, it must always be preceded by a protest, or the party to whose use money is paid will not be liable to any action for its recovery, *Vandewall v. Wyrell*, Mood. & Malk. 87; see further, *ante*, sect.

In case of acceptance for honour.

153. A bill is usually protested for non-acceptance or non-payment at the place where the dishonour occurred, see *Mitchell v. Baring*, 1 B. & C. 4; and by the 2 & 3 W. 4, c. 98, where a bill is made payable at a place other than drawee's residence, and is not accepted at presentment, it may, without further presentment, be protested in the place where it has been made payable, see further, Dig. p. ii.

Where protest should be made.

BILLS (EXCHANGE).

154. In an action against the drawer of a foreign bill payable after sight, a protest must be proved, *Gale v. Walsh*, 5 T. R. 239. Proof of the noting alone is not sufficient, *Rogers v. Stephens*, *ub. sup.*; and it must be averred as well as proved; but if the drawer had no funds, or probability of effects, in the hands of the drawee, such proof

Proof of protest.

- Bills of Exchange.* is excused, *Legge v. Thorp*, 12 East, 17; S. C. 2 Campb. 300; so if the drawer has admitted his liability by promising to pay, *Gibbon v. Coggan*, 2 Campb. 188, recognized in *Patterson v. Beecher*, 6 J.B. Moore, 319. To intitle the indorsee of an inland bill to recover interest from the drawer, it is not necessary to prove protest for non-payment, *Windle v. Andrews*, 2 B. & A. 696; but if protest be set out, it must be proved, *Bonlager v. Talleyrand*, 2 Esp. 550. In an action on a foreign bill, the dishonour will be proved by producing the notarial protest under seal; but such a protest is no evidence that a foreign bill has been presented for payment in England, *Chesmer v. Noyes*, 4 Campb. 129.
- Stamp on protest. 155. Protest of any bill of exchange or promissory note for any sum of money not amounting to 20*l.*, is, by 55 G. 3, c. 184, liable to a stamp duty of 2*s.*; amounting to 20*l.* and not to 100*l.*, 3*s.*; amounting to 100*l.* and not to 500*l.*, 5*s.*; amounting to 500*l.* or upwards, 10*s.*
- ## XII. REMEDY BY ACTION ON BILLS.
- Form of action. 156. Payment of a bill may be enforced by a special action of *assumpsit*, the usual remedy; although, where there is a privity between the parties, as between the drawer and the acceptor or the payee, it may be by action of debt, *Priddy v. Henbrey*, 1 B. & C. 674; S. C. 3 D. & R. 165. It may be brought by different parties at the same time; but the court, even in the case of an acceptor, will, by a late rule of court, stay proceedings on payment of the debt and costs, R. T. 1 Vict.
- Staying proceeding. 157. Formerly the declaration extended to a great length; but by the new rules concise forms are given on bills and notes, also as to pleading under the new rules, see Jervis's New Rules, 4th ed.; Wordsworth's New Rules, 2d ed.; Selwin's N. P. 10th ed.; so
- Effect of the new rules. before the 9 G. 4, c. 15 (see Dig. p. iii. tit. LIMITATIONS), nonsuits were very frequent, on the ground of variances between the instrument as set forth in the declaration, and that produced in evidence, Selw. N. P.; so before the 3 & 4 W. 4, c. 42, s. 12, it was not sufficient to state merely the initials of the Christian name of a defendant, although the initials only appeared on the bill, *Reynolds v. Hankin*, 4 B. & A. 537, overruling *Howell v. Colman*, 2 B. & P. 466.
- Of 9 G. 4, c. 15, as to variances. 158. Where a party thinks proper to resist payment of a bill, he may rest his defence on a variety of grounds, as in the case of a bill being lost, stolen or destroyed.
- Of 3 & 4 W. 4, c. 41, as to initials. It is a good defence to an action on a bill that it was not produced or shewn to be lost or destroyed, though the party promised to pay
- Defences to the action.
- In case of bill being lost &c.

, *Powell v. Roach*, 6 Esp. 76; and where the instrument is in such state that it is transferable by delivery, and may therefore get into the hands of a *bonâ fide* holder, and for valuable consideration, the acceptor cannot, in that case, recover upon it, *Pierson v. Hutchinson*, 3 Campb. 211; *Mayor v. Johnson*, 3 Campb. 324; if, however, an acceptor pay one who derives his title through a forgery, that will not discharge him, *Esdaile v. Lanauze*, 1 Y. & Coll. 394; *Johnson Windle*, 3 Bing. N. C. 225.

*Bills of
Exchange.*

In an action against the acceptor by an indorsee, it is no defence that the drawers, who were also the indorsers, were infants, *Taylor Croker*, 4 Esp. 187; or that the payee was an infant, *Grey v. Cooper*, 3 Dougl. 65.

In case of for-
gery.

In case of in-
fancy.

As a rule, payment cannot afford a defence, unless it be made to the holder and real proprietor of the bill; for payment to any other is no discharge to the acceptor, except in the case of a *bonâ fide* holder of a lost bill, *Pierson v. Hutchinson*, *ub. sup.*; see also further *ante*, sect. 113. As to the defence on the ground of indulgence shewn to parties, and want of notice, &c. see *ante*, sect. 17, 27, 145; also on the ground of want of consideration, or of an illegal consideration, see *ante*, sect. 70 *et seq.*

Payment and
satisfaction.

Indulgence, &c.

Consideration.

The Statute of Limitations is a good plea in equity as well as at law (see Dig. p. iii. tit. LIMITATIONS), and the statute begins to run on a bill or note not from the time the bill is drawn, but from the time it falls due, *Wittersheim v. Lady Carlisle*, 1 H. Bl. 631; unless the bill be payable at or after sight, in which case the statute begins to run from the time presentment is made, *Holmes v. Kerrison*, 2 Taunt. 323; or it be payable on demand, in which case the statute runs from the date of the instrument, and not from the time of the demand, *Christie v. Fonsick*, Selw. N. P. 352, 10th ed.; *sed aliter* if payable at a certain time, as one month, after demand, *Thorpe v. Coombe*, Ry. & Mood. 388; see also *Norton v. Ellam*, 2 M. & W. 461. As to promises or part payments, or indorsements of payments, to take the case out of the statute under 9 G. 4, c. 14, see Dig. p. iii. tit. LIMITATIONS.

Statute of Limi-
tations.

FORMS OF BILLS OF EXCHANGE.

No. CCXL.
Inland Bill.

No. CCXL.
Inland Bill.

[Stamp (a)]

London, (c) 1 Jan. 18 (e).

£100 (b).

Two months (d) after date (d) (or "at sight,"
or "at days after sight," (e), or "on de-
mand,") pay (f) to Mr. C. D. (g) (or "order," (h)
or "bearer," or "to me," or "my order," (h)) one
hundred pounds, (i) value received (k).

A. B. (drawer (l)).

To Mr. C. D. (m) (drawee)
merchant, in Bristol.

Accepted C. D. (general acceptance at foot of bill).

Accepted (n) C. D. payable at Messrs. (special acceptance
at foot of bill.)

Indorsed (o) A. B. [or "E. F." (first indorser)].

G. H. I. K. &c. (second, third, &c. indorsers.)

Accepted, payable at
Messrs.
(special acceptance
across the bill.)

- (a) As to the stamp, see Pref. sect. 60—69.
(b) As to superscription of the sum, see *ante*, Pref. sect. 32.
(c) As to dating the place and the time, see *ante*, Pref. sect. 30, 31.
(d) As to the time when made payable, see *ante*, Pref. sect. 33.
(e) As to presentment in case of bill payable after sight, see *ante*, Pref. sect. 127.
(f) As to the order to pay, mode of payment, &c. see *ante*, Pref. sect. 34, 35, also *ante*, sect. 113 *et seq.*
(g) As to the description of the payee, see *ante*, Pref. sect. 36, 37, 38.
(h) As to the force of these words, see *ante*, Pref. sect. 39.
(i) As to the statement of the sum, see *ante*, Pref. sect. 41, 42.
(k) As to the effect of omitting these words, see *ante*, Pref. sect. 43.
(l) As to the drawer's name and signature, see *ante*, Pref. sect. 44—49.
(m) As to the name of the drawee, see *ante*, Pref. sect. 50.
(n) As to the manner of accepting a bill, see *ante*, Pref. sect. 51—54; and also the law relating to acceptances, see *ante*.
(o) As to the law relating to the indorsement of bills, see *ante*, Pref. sect. 55, *et seq.*

No. CCXLI.

No. CCXLI.

*Foreign Bill (a).*Foreign Bill.*Stamp (b)]*

London, 1 Jan. 18 .

Exchange for 10,000 livres Tournoises.

At two usances (c) (*or* "at sight," *or* "at after sight,"
or "at after date,") pay this my first exchange [second
 and third of the same tenor and date not paid] to Messrs. A. B.
 Co. *or* order (*or* "bearer,") ten thousand livres Tournoises,
 due received of them, and place the same to account as per
 advice from

H. T.

To Messrs. C. D. & Co. in Paris,
 payable at

No. CCXLII.

No. CCXLII.

*Bill on Venice.*Foreign Bill.

London, 16 Feb. 18 .

Exchange for D.1000.

At usance (d) pay this my first (second &c. see *supra*) ex-
 change to Mr. D. P. (*or* "to the procuration (e) of Mr. D. P.")

(a) Foreign bills are usually drawn in sets; that is, copies of the bill are made on separate pieces of paper, each part containing a condition that it shall continue payable only so long as the others remain unpaid. As between *bond fide* holder for value of different parts of the same bill, he who first obtains a title to his part is intitled to the other parts, *Perreira v. Jopps*, cited 10 B. & C. 449; and *secus* where one party has taken another security as a substitute for his part, *Heldsworth v. Hunter*, 10 B. & C. 449.

(b) As to the stamp on foreign bills, see Dig. p. ii. tit. *BILLS (EXCHANGE)*.

(c) This word means the period that was originally appointed between different countries for the payment of bills, equivalent now, as between London and Amsterdam, Paris, Antwerp, &c. to one month; between London and the towns in Spain and Portugal, to two months; between London and Venice, and the towns in Italy, to two months; and when usance is one month, half usance is always fifteen days, Marius, 23; Beawes, 444; Bayl. Bills, 202, 5th ed.

(d) As to the usance and half usance, see *ante*, n. (c).

(e) As to what is understood by procuration, see *ante*, sect. 46.

No. CCXLII.
Foreign Bill.

one thousand ducats banco value, of Mr. A. G., and place it to account as per advice from

J. W.

To Mr. merchant, in Venice.



No. CCXLIII.
Foreign Bill.

No. CCLXIII.

Bill on Amsterdam.

London, 10th Apr, 18 .

Exchange for £173 : 15s. st. at 35sc. 7g. per £ st.

At two usos (*or* usances) and a half (*a*) pay this my first (second &c. see No. CCXLI.) to Mr. J. M. or order one hundred and seventy-three pounds fifteen shillings sterling, at thirty-five shillings seven groots per pound st. value, of Mr. J. A. and place it to account as per advice from

T. S.

To Mr. C. L. merchant, in Amsterdam.



No. CCXLIV.
Exchequer Bill.

No. CCXLIV.

Exchequer Bill. (b)

No. 8333. 12th May, 18 .

By virtue of an Act of Parliament 6 & 7 Vict. for raising the sum of £ by exchequer bills, for the service of the year 18 . This bill intitles A. B. or order to one thousand pounds, with interest after the rate of 2½*d. per centum per diem*, payable out of the first aids or supplies to be granted the next session of Parliament, and this bill is to be current and pass in any of the public revenues, aids, taxes, or supplies, or at the Receipt of Exchequer at Westminster, after the 5th day of April. Dated at the Exchequer the 12th day of May, 18 .

If the blank is not filled up, the bill will be paid to the bearer.

N. B. The checks must not be cut off.

(*Chancellor of the Exchequer*).

(a) As to the usance and half usance, see *ante*, n. (c).

(b) As to exchequer bills, see Dig. p. ii. tit. EXCHEQUER.

FORMS RELATING TO NOTICES.

No. CCXLV.

No. CCXLV.
*Non-acceptance**Notice of Non-acceptance (a) of a Bill.*

Sir,

Take notice that I am the holder of the bill of exchange, dated for payment of £ two months after date, drawn on C. D. by and indorsed by you, and that the same has been presented for acceptance to the said C. D. and he has refused to accept the same, and I require you immediately to pay the amount, with expences.

Yours, &c.

E. F.

To Mr. A. B.

Broad Street, London.

No. CCXLVI.

No. CCXLVI.
*Non-payment.**Notice of Non-payment of a Bill.*

Sir,

Take notice that I am holder of a bill, dated for payment of £ two months after date, drawn on C. D. and indorsed by you ; and that the same has been presented for payment, and dishonoured by the said C. D. and therefore I require you immediately to pay the same, with expences, &c.

Yours, &c.

E. F.

To Mr.

Broad Street, London.

(a) As to the law relating to notices of non-acceptance and non-payment, see ante, Pref. sect. 133 *et seq.*

FORMS RELATING TO PROTEST OF BILLS. (a)

No. CCXLVII.

Protest under
8 & 9 W. 3.

No. CCXLVII.

*Notice of Protest (b) of an Inland Bill, pursuant to 8 & 9
W. 3, c. 17.*

Sir,

In pursuance of the statute in such case made and provided, I give you notice that I am the holder of the bill of exchange dated and for the payment of £ two months after date, and drawn by you on C. D.; and that the same was presented for payment on and not paid, but dishonoured by the said C. D., and that I have caused the said bill to be duly protested, [and above is the copy of the protest, (c)] and I request you immediately to pay me the amount of the said bill, with expences and interest.

Dated, &c.

Yours, &c.

To Mr.

Antwerp.

No.
CCXLVIII.*For
Non-acceptance.*

No. CCXLVIII.

*Protest of Foreign Bill for Non-acceptance.**(Copy bill and indorsements on first side of a sheet of paper, and
on the next side proceed as follows.)*

On this day, the first day of November, one thousand eight hundred and forty-four, at the request of A. B. bearer of the original bill of exchange whereof a true copy is on the other side written, I, A. B. of London, notary public, by royal authority duly admitted and sworn, did exhibit the said bill to E. F., on whom the said bill of exchange was drawn, at his counting-

(a) As to the law relating to the protest of bills of exchange, see *ante*, Pref. 148, 155. Similar forms of protests may be found in Montefiore's Commercial and Notarial Precedents, and 4 Chitty's Commercial Law.

(b) This notice is necessary where the party resides abroad, see *ante*, Pref. sect. 150; see also further *post*, the forms relating to protest. Similar forms may be found in Montefiore's Commercial and Notarial Precedents, and 4 Chitt. Commercial Law.

(c) It is now settled that a copy of the protest need not, in any case, be sent. *Goodman v. Harvey*, see *ante*, Pref. sect. 150.

at No. , Cornhill, in the City of London, for his
 ance thereof, and requested him to accept the same, which
 sed to do, declaring &c. (*here set out the reason of refusal,*
trial.) Wherefore I, the said notary, at the request afore-
 ave protested, and by these presents do solemnly protest,
 . against the drawer, drawee, and the indorsers of the
 ill, as all others whom it may concern, for exchange,
 hange, and all costs, charges, damages and interest suf-
 nd to be suffered for want of acceptance of the said bill.
 lone and protested in London, in the presence of G. H.
 ness G. H. A. B. (L. s.)
 Notary Public.

subscribe the expences
oting and protest.)

No. CCXLIX.

test of a Bill drawn upon a Person not to be found, and
not particularly addressed.

No. CCXLIX.
 For
 Non-acceptance.

this day of in the year at the request of
 . D. of the City of London, merchant, and bearer of the
 al bill of exchange, whereof a true copy is on the other
 ritten, I, A. B. of the said city, notary public &c., went
 General Post-office, London, and to the Bank of Eng-
 and on the Royal Exchange, and made diligent inquiries
 d after the said Mr. J. G. on whom the bill is drawn, and
 : not been able to find the said Mr. J. G. or discover or
 ain where he is to be found, and no person at either of the
 laces hath informed or been able to inform me where the
 . G. resides; and the said J. G. and his residence are
 y unknown to the said C. D. and to me, and any other
 who could give information respecting the said J. G. or
 y other person who would accept (*as the case may be*) the
 ill of exchange for honour or on account of the said J. G.
 any other party to the said bill: Whereupon &c. (*proceed*
the last form.)

No. CCL.

Counter-protest.

No. CCL.

Counter-protest by reason of Bankruptcy.

On this day of in the year before me, J. M. of this City of London, notary public, &c. personally came and appeared Mr. C. D. of the said city, merchant, and produced unto me the original bill of exchange, copy whereof is on the other side written, and the protest for non-acceptance, bearing date the day of now last past, by N. O. notary public. And whereas Messrs. L. and M. the drawers of the said bill of exchange, by the London Gazette bearing date the day of instant, are declared bankrupts, in pursuance of a fiat of bankruptcy under the great seal of G. B. and by means thereof they are incapable of making satisfaction or payment of the said bill: Therefore I, the said notary, at the request of the said Mr. C. D., have counter-protested, and by these presents do most solemnly counter-protest, as well against the said drawer of the said bill as against all others whom it doth or may concern, for exchanges, re-exchanges, and all costs, charges, damages and interests suffered and to be suffered for want of acceptance to the said bill. Thus done and counter-protested in London aforesaid, in the presence of O. P. and Q. B., witnesses hereunto required.



No. CCLI.

*Common Form
of Protest, and
Act of Honour
thereon.*

No. CCLI.

*Common Form of Protest of Foreign Bill for Non-acceptance,
and Act of Honour thereon. (a)*

(Make a true copy &c. see ante, No. CCXLVIII.)

On this day of in the year at the request of Mr. A. B. of the City of London, merchant, and bearer of the original bill of exchange, whereof a true copy is on the other side written, I, R. M. of the said city, notary public, by royal authority duly admitted and sworn, went to the house of Mr. C. D., on whom the said bill is drawn, and there speaking with a clerk

(a) As to acceptance *supra protest* for honour, see *ante*, Pref. sect. 111.

counting-house, I produced and exhibited unto him the
 bill of exchange, and demanded acceptance thereof, to
 he answered that &c. (*here set out the answer*); which
 not being satisfactory, I the said notary, at the request
 id, have protested, and by these presents do solemnly
 , as well against the drawer of the said bill of exchange
 against all others whom it may or doth concern, for exchange,
 change, damages, costs, charges and interests suffered or
 offered for want of acceptance of the said bill of exchange.
 done in the presence of E. T. and G. H., witnesses hereunto
 d.

R. M. (L. S.)

Notary Public.

towards on the same day, month and year, before me the
 notary and witnesses, personally came and appeared Mr.
 of this city, merchant, who declared he was ready and
 accept the said bill of exchange now under protest, for
 our and account of Mr. G. N. the drawer, (*or "indorser
 : the case may be,*) holding him the said drawer thereof,
 others concerned, always obliged to him the said appearer
 reimbursement in due form of law.

No. CCLI.
*Common Form
 of Protest, and
 Act of Honour
 thereon.*

Act of honour
 thereon.

No. CCLII.

Protest of Foreign Bill for Non-payment.

by on one side &c. see ante, No. CCXLVIII.)

this day, the year at the request of G. C. bearer
 original bill of exchange, whereof a true copy is on the
 side written, I, R. L. of London, notary public, by royal
 ty duly admitted and sworn, did exhibit the said bill to
 on whom the bill was drawn, at his counting-house,
 No. , Cornhill, in the City of London, and demanded
 at thereof, which he refused: Whereupon I, the said
 , at the request aforesaid, have protested and by these
 do solemnly protest, as well against the drawer as
 : the drawee and indorsers of the said bill, and all
 whom it may concern, for exchange, re-exchange, and all
 charges, damages and interest suffered or to be suffered

. I.

N N

No. CCLII.
*Protest for
 Nonpayment.*



No. CCLII. for want of payment of the said sum of £ so due on the
Protest for said bill of exchange as aforesaid. Thus done &c. (see last
Nonpayment. precedent.)

No. CCLIII.
Nonpayment
of Part.

No. CCLIII.

Protest when the Acceptor pays Part only.

On this day of year at the request of A. B. &c.
 and bearer of the original bill of exchange, whereof &c. (see *ante*,
 No. CCXLVIII.) I, R. C. of &c. went to the house of G. B.
 by whom the said bill was accepted, and demanded payment
 thereof, whereunto he answered that he would only pay £ ,
 part of the said bill, alleging that he the said G. B. had no more
 effects of the drawer thereof in his hands; which said sum of
 £ the said A. B. the holder of the said bill accepted and
 did receive the same, and requested me the said notary to protest
 for the remaining sum of £ due on the said bill of exchange;
 Whereupon I the said notary, at the request aforesaid, have
 protested, and by these presents do solemnly protest, as well
 against the drawer of the said bill, as all others whom it may
 or doth concern, for the remaining sum of £ so due on the
 said bill, for exchange, re-exchange, and all costs, charges,
 damages, interest and expenses suffered and to be suffered for
 want of payment of the sum of £ so remaining due on the
 said bill as aforesaid. Thus done &c. see *ante*, No. CCXLVIII.

*Act of Honour thereupon for the remaining Sum due on
 the above Bill.*

Act of honour
 thereupon.

Afterwards, on the day, month and year first above-written,
 before me the said notary and witnesses, personally came and
 appeared Mr. E. L. of the said City of London, merchant, who
 declared that he would pay the remaining sum of £ left due
 and unpaid on the said bill now under protest, for the honour
 and on account of F. L. the indorser thereof, holding him the
 said F. L. and all others concerned, always obliged to him the
 said appearer for reimbursement in due form of law.

No. CCLIV.

No. CCLIV.
For better
Security.

Protest of a Bill, when the Acceptor becomes a Bankrupt, for better Security. (a)

(Copy &c. see *ante*, No. CCXLVIII.)

On this day of at the request of C. O. of the City &c. and bearer &c. (*see last precedent*) I, J. M. of &c. notary &c. having perused and read the London Gazette, bearing the &c. instant, found that C. D. the acceptor of the said bill of exchange was therein declared a bankrupt, in pursuance of a fiat of bankruptcy under the Great Seal of G. B. having been awarded and issued against him; in consequence whereof I the said notary went to the dwelling-house of the said C. D. and there, speaking with a clerk, I demanded security for the due payment of the said bill of exchange when the same shall become payable, when the said clerk answered, that the said C. D. was a bankrupt, and had given no directions respecting the said bill: Whereupon [the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the drawer and acceptor of the said bill as against all others it may or doth concern, for exchanges, re-exchanges, damages, costs, charges and interest suffered or to be suffered, for want of better security for payment of the said bill of exchange when due and payable. Thus done &c. see *ante*, No. CCXLVIII.

No. CCLV.

No. CCLV.
Protest under
9 & 10 W. 3.

Protest of Inland Bill for Non-payment as prescribed by 8 & 9 W. 3, c. 17 (b).

(Write above the protest an exact copy of the inland bill, and then proceed as follows.)

Know all men that I, A. B. on the day of at the usual place of abode of the said C. D., have demanded payment

(a) As to protesting for better security, see *ante*, Pref. sect. 151.

(b) As to protest of inland bills under 8 & 9 W. 3, and 3 & 4 A. see Dig. p. ii. tit. BILLS (EXCHANGE).

**No. CCLV.
Protest under
9 & 10 W. 3.**

of the bill of exchange of which the above is a copy, which the said C. D. did not pay; therefore I, the said A. B., do hereby protest the said bill. Dated this day of

A. B. (L. S.)

Notary Public.

No.
CCLV.—2.
*Certificate of a
Duplicate
Protest.*

No. CCLV.—2.

Certificate of a Duplicate Protest.

I, J. M., of London, notary public, &c. see *ante*, No. CCXLVIII. do hereby certify that the above written is a duplicate or true copy of a certain instrument of protest made before me, and taken and subscribed from my registry of all material acts by and before me sped and done, in book marked in fol. .

In witness whereof, I hereby set my hand this day of
J. M.

Notary Public.

No. CCLVI.
Signature of
Chief
Magistrate.

No. CCLVI.

Certificate of the Signature of the Chief Magistrate.

I, J. M., of &c. notary public &c. see *ante*, No. CCXLVIII. do hereby certify and declare that the signature A. B. mayor, at the foot of the foregoing affidavit, is of the own proper handwriting of the Right Hon. A. B. Lord Mayor of this city, in whose presence oath was duly administered in due form of law to Mr. C. D. the deponent named in the said affidavit, and who signed the same in his presence; therefore full faith and credit ought to be given thereto in court and thereout. London this day of .

Witness my hand,

J. M.

Notary Public.

No. CCLVII.

No. CCLVII.
*Attestation of
Protest.**Attestation of intimating and delivering an authentic Copy of
Protest.*

Afterwards on the day of the said month of I the
d notary, at the request of the said A. B. and C. D. did inti-
te the foregoing protest to the within-named E. F., and then
d there speaking to the said E. F., I delivered to him an au-
entic copy thereof, which he took and said (*here set out
swer*); which answer not being satisfactory to the said re-
estants, I, the said notary, did and do persist to protest in
inner and form aforesaid.

No. CCLVIII.

No. CCLVIII.
*Affidavit.**Affidavit of the Truth of a Protest.*

A. B. master, C. D. first mate, and E. F. second mate (*as the
se may be*) of the ship or vessel called the being sever-
lly duly sworn upon the Holy Evangelists of Almighty God,
severally make oath and say that the instrument of protest,
reunto annexed, hath been clearly and distinctly read over to
em these deponents, and that the several matters and things
erein contained are right and true in all respects, as the same
e therein particularly alleged, declared and set forth.

II. PROMISSORY NOTES.

Definition of a Promissory Note.
Not valid at Common Law.
But valid under 3 & 4 A.
Distinction between Notes and Bills.
Different kinds of Promissory
Notes.
Bank Notes.
Bankers' Notes.
Particular Qualities of Promissory
Notes.

1. *Parties.*
5. *Who they are.*
6. *Capacity, &c. of contracting*
Parties.
Feme Covert.
7. *Corporations.*
8. *Agents &c.*
9. *Liability of Maker.*
Of Indorser.

Promissory Notes.	2. Form of Promissory Notes.	Failure &c., of Consideration.
	10. Date of Place. Date as to Time.	6. Transfer.
	11. Time when payable.	22. By Indorsement. Foreign Notes transferable.
	12. Promise to pay. Promise to pay Money.	23. Transfer by Delivery.
	13. Joint and several.	24. Bank Notes how transferable. Bankers' Notes how transferable.
	14. Payable to Order or Bearer. On Demand.	7. Payment.
	15. Payable at or after Sight.	25. Days of Grace.
	16. Place where payable.	8. Presentment.
	17. Sum payable.	26. Presentment necessary for what Purpose. What not Laches.
	18. Maker's Signature.	9. Notice of Dishonour.
	3. Acceptance and Indorsement.	27. What is Notice of Dishonour.
	19. No Acceptance. Indorsement as of Bills.	10. Remedy on Promissory Notes.
	4. Stamp.	28. Form of Action. Payment of Interest. Statute of Limitations, &c.
	20. How Notes are affected by the Stamp Acts.	
	5. Consideration.	
	21. Good Consideration presumed.	

Definition of a promissory note. SECT. 1. A promissory note, or, as it is vulgarly called, a note of hand, is an engagement to pay a sum of money at a certain time, or on demand, or at sight, to a person therein named. Promissory notes were held not to be valid instruments at common law, because not valid at common law, but valid under 3 & 4 A. a note was merely an evidence of a debt; but the 3 & 4 A. c. 9, has put them on the same footing as bills, *Brown v. Harraden*, 4 T. R. 151.

Distinction between notes and bills. 2. A promissory note in its original shape, of a promise from one man to pay another, bears no resemblance to a bill of exchange; it is only when it is transferred that the resemblance commences, "it being then an order by the indorser upon the maker of the note (his debtor by the note) to pay to the indorsee, which is the definition of a bill of exchange," *per* Lord Mansfield, *Heylin v. Adamson*, 2 Burr. 675. The point of resemblance being thus fixed, it will be easy to see how far the law relating to bills of exchange is applicable to promissory notes.

Different kinds of promissory notes. 3. Promissory notes are of three kinds, namely, such as are given from one individual or firm to another; those which are issued by the Bank of England, which are called Bank Notes; and those which are issued by bankers, particularly in the country, which are called bankers' cash notes, formerly Goldsmiths' Notes, *Buller v. Crisp*, 6

l. 29; *Nicholson v. Sedgwick*, 1 Lord Raym. 180; S. C. 3 Salk.

Promissory
Notes.

Bank notes are not, like bills of exchange, mere securities or documents for debts, but are treated as money, *Miller v. Race*, 1 R. 457; they may be described as money in the memorial of an entry deed, *Wright v. Reed*, 3 T. R. 554; and pass as cash or property bequeathed by will, *Fleming v. Brook*, 1 Schoales & Lef. ; but before the 1 & 2 V. c. 110 (see Dig. p. ii. tit. EXECUTION), could not be taken in execution as goods, *Francis v. Nash*,

Bank notes.

Temp. Hardw. 53. Bankers' notes are considered money or when expressly received as such, *Pickard v. Bankes*, 13 East, *Spratt v. Hobhouse*, 12 J. B. Moore, 402; but not when taken orally on account of a debt, if, on being duly presented for payment, they be dishonoured, *Ward v. Evans*, 2 Lord Raym. 928; 2 Salk. 442; Holt, 120; 6 Mod. 36; 1 Com. 138. The issue of these two last kinds of notes are regulated by statutory provisions, Dig. p. ii. tit. BANK, BANKING COMPANIES.

Bankers' notes.

The properties of promissory notes, both as they resemble and as they differ from bills of exchange, may be considered under the following heads; as to 1, Parties; 2, Form of the note; 3, The stamp; 4, The transfer; 5, Presentment; 6, Payment; 7, Notice.

Particular
qualities of promissory
notes.

1. Parties.

1. The maker of a note answers to the acceptor of a bill, the indorser of a note answers either to the drawer or indorser of a bill, and the payee of a note is the payee or indorsee of a bill.

Who they are.

2. The rules as to the incapacity, the rights, and the liabilities of parties to bills already mentioned, see *ante*, Pref. BILLS OF EXCHANGE, sect. 5 *et seq.*, apply also to promissory notes. A note payable to a *feme sole* becomes after marriage the property of her husband, *Connor v. Martin*, cited 3 Wils. 5; and the interest passes by indorsement of the husband alone, *Mason v. Morgan*, 2 Ad. & El. 30; 4 Nev. & Man. 76; but if the husband die before he has reduced it to possession, the right survives to the wife, *Gaters v. Addeley*, 6 M. & W. 423.

Capacity, &c.
of contracting
parties.
Feme covert.

3. As to corporations, it seems doubtful whether a local Act, enabling a corporation to issue promissory notes under their common seal, will enable them to make a promise, and subject them to an action of assumpsit as incident to the making a note, *Slack v. Highgate Archway Company*, 5 Taunt. 792. In regard to bills of exchange assumpsit will lie in that case, *Murray v. East India Company*, 5 B. & A. 204.

Corporations.

4. As to agents the construction put upon 3 & 4 A. c. 9, s. 1, is, Agents, &c.

Agents, &c.

Promissory Notes.

that the cases therein enumerated, in which promissory notes signed by an agent are made assignable, are instances only, *Dickenson v. Teague*, 4 Tyrw. 450. But if a man makes a note, and signs his name in a character in which he cannot bind himself, he becomes personally liable; therefore where two makers of a promissory note gave it to a creditor of their testator, whereby "as executors they severally and jointly promised to pay on demand, with interest," they were held personally liable, *Childs v. Monins*, 2 B. & B. 460; S. C. 5 J. B. Moore, 282; see also *Ridout v. Bristol*, 1 Crompt. & J. 231; S. C. 1 Tyrw. 90; so if parish officers make a note, and sign themselves "as churchwardens and overseers," a character in which they cannot bind themselves, they contract as individuals, *Rew v. Petit*, 1 Ad. & Ell. 196; S. C. nom. *Crew v. Petit*, 3 Nev. & Man. 456. As to joint and several notes, see *infra*.

Liability of maker.

9. The maker of a note, like the acceptor of a bill, is the principal debtor, though it be given by the maker to the payee without consideration, *Carstairs v. Rolleston*, 5 Taunt. 551; S. C. 1 Marsh. 257; and the holder take it with notice of the absence of consideration, *Nichols v. Norris*, 3 B. & Ad. 41; and although the holder of a joint and several note of A. and B., by discharging A., discharges also B., *Nicholson v. Revell*, 4 Ad. & Ell. 675; S. C. 6 Nev. & Man. 192; yet it appears that where time is given to one maker, it will not relieve the other, *Clarke v. Wilson*, 3 M. & W. 208; and it seems doubtful whether evidence is admissible to shew that one is principal and the other surety, and consequently that the surety is discharged by time given to the principal, *Price v. Edmunds*, 10 B. & C. 578. The liability of the maker of a note given to secure the debt of a third person is the same as that of a party who gives a guarantee, *Stone v. Compton*, 1 Arn. 436.

Indorser.

The maker of a note, like the acceptor of a bill, is bound to pay on the day the instrument falls due, 5 Taunt. 240; *Soward v. Palmer*, 8 Taunt. 277; S. C. 2 J. B. Moore, 274; but an indorser has a reasonable time within which to pay the bill or note, *Walker v. Barnes*, 5 Taunt. 240.

2. Form of Promissory Notes.

Date of place.

10. The observations as to the place at which a bill is dated, see *ante*, Pref. BILLS (EXCHANGE), sect. 30, 31, are applicable to a note, except so far as notes issued by banking companies are restricted in this particular by the 3 & 4 W. 4, c. 98, see Dig. p. ii. tit. BANK

Date as to time.

(BANKING COMPANIES); and the same may be said of the date of a note, except that the dates of notes payable to bearer on demand must

not, by 55 G. 3, c. 184, s. 18, be printed under a penalty of 50*l.*; so as to the sum superscribed in figures, see *ante*, Pref. **BILLS**, sect. 32.

11. As to the time when a note is made payable see *ante*, sect. 3, it must not, as in the case of a bill, be made to depend upon the happening of any contingency; therefore a note made for the payment of a sum, the price of certain goods, upon condition "that, if any dispute should arise respecting the goods, the note should be void," *Hartley v. Wilkinson*, 4 M. & S. 25; or "provided the terms mentioned in certain letters shall be complied with," *Kingston v. Long*, 4 Dougl. 9, is not a valid instrument either as a bill or note; and, as a rule, if the sum specified is not payable at all events, *Clarke v. Percival*, 3 B. & A. 660; therefore if the money is to be paid out of a specified fund, which may never be realized, as a note promising to pay on the death of G. H., if he leaves either of us sufficient, is void, *Roberts v. Peake*, 1 Burr. 323; or a note promising to pay on the sale or produce when sold of an inn," *Hill v. Halford*, in error, 2 B. & P. 413; so an order or promise to pay "in good East India bonds, &c.," is neither a bill or a note, B. N. P. 272; *R. v. Wilcox*, Bayl. Bills, 8, 5th ed.; so a note promising to pay a sum of £100, and also all other sums which may be due, is too indefinite, *Smith v. Nightingale*, 2 Stark. 375; but the contingency to vitiate the bill or note must be apparent upon the face of it, *Richards v. Richards*, 2 B. & Ad. 447.

12. No particular form of words is necessary to constitute a valid promissory note; neither the word "promise" nor the word "pay" indispensable, it is sufficient if a promise can be implied; therefore "I promise to account with S.," *Morrice* (or *Morris*) v. *Lee*, 8 Mod. 32; "I acknowledge myself to be indebted to a A. in £100, to be paid on demand," *Casborne v. Dutton*, Selw. N. P. 380, n. 10th ed., have been held to be good promissory notes; see also *Chadwick v. Allen*, 1 Stra. 706; *Green v. Davis*, 4 B. & C. 235; but a note acknowledging only the receipt of drafts or checks, and promising to pay the amount, is not a good note, because as the drafts might not be paid, the note was held to be contingent, *Williamson v. Bennett*, 1 Campb. 417; and a common I. O. U. is not valid as a promissory note, although receivable in evidence under an account stated, without a stamp, *Fisher v. Leslie*, 1 Esp. 426; *Israel v. Israel*, 1 Campb. 175; but a promissory note to pay a sum six weeks after the death of the maker's father, was held good, because the payment was not contingent, although the time was uncertain, *Colehan v. Cool*, 2 Str. 1202; S. C. affirmed in error, Willes, 393. So a note given to an infant, payable when he should come of age, specifying

Promissory
Notes.

Time when
payable.

Promise to pay.

separate note of A. only, it cannot be declared on as of A. and B., though given to secure a joint debt, *Sig* 2 Campb. 308; see also *Emly v. Lye*, 15 East, 7; b action by A. against B., it was stated in the declarat another jointly *or* severally promised to pay, this was same as jointly *and* severally, and that both promis one of them should pay, consequently it was a joint a *Rees v. Abbott*, Cowp. 832. So, although a note words "I promise to pay," yet if it be signed by the self and his partner, the note is several against the and joint against the firm, *Hall v. Smith*, 1 B. & C.

Payable to order
or bearer.

14. A bill or note payable to the order of a person himself, *Smith v. M'Clure*, 5 East, 476; S. C. 2 & a note made payable to A. only, without the words "to bearer," is held to be a good promissory note wi of Anne, *Smith v. Kendall*, 6 T. R. 123, recognizin Raym. 1545, and also Marius. A note payable to b is in law payable on demand, *Whitlock v. Underwood*, S. C. 3 D. & R. 355; but a note payable on deman until paid, is not to be considered as payable immedi v. *Smith*, M'Clel. & Y. 338; see also *Norton v. Elle* 461: S. C. 1 Jur. 433.

On demand.

Payable at or
after sight.

15. The words "after sight" mean, on a bill, after *ante*, Pref. BILLS, sect. 33; but, on a note, the exp being again exhibited to the maker, as a note is incap ance, *Sutton v. Toomer*, 7 B. & C. 416; see also *Di* 1 Cr. M. & R. 307; S. C. 4 Tyrw. 1013.

Place where
payable.

16. The 1 & 2 G. 4, c. 78, which regulates the form respect, is not applicable to notes; therefore if the

memorandum not forming a part of the contract, *Exon v. Russell*, 10 B. & C. 505; recognized in *Williams v. Waring*, 10 B. & C. 2.

Promissory
Notes.

As to the sum mentioned in the instrument to be payable, see Pref. **BILLS**, sects. 41, 42; and as to the insertion of the words "received," *ante*, sect. 43.

Sum payable,
&c.

The maker's signature, like that of the drawer of a bill, may be in any form or place of the instrument, see *ante*, Pref. **BILLS**, sect. 43; but where a note begins with the words "I promise to pay," but the maker signs in his own name for others his partners, it binds the partnership, *Galway (Ld.) v. Matthew*, 10 East, 264; 1 Campb. 408; and so where a note signed by two parties is in this manner, this has been held to be joint and several, *St. v. Blackstock*, Holt, N. P. C. 474; S. P. *Marsh v. Ward*, 130; but where such a note is signed in the alternative, as "S. or else J. G.," this has been held not to be the promissory of J. G. within the statute, *Ferris v. Bond*, 4 B. & A. 679; and where a person signed a note on the representation that others were in, and one of the parties afterwards refused to sign, held that the payee could not recover against the party that signed, unless the others were satisfied that the person signing was cognizant of the fact of refusal, *Leaf v. Gibbs*, 4 C. & P. 466.

Maker's sig-
nature.

3. Acceptance and Indorsement.

1. Acceptance forms no part of a promissory note, but indorsement does, the form of which is subject to the same remarks as have been made on that in respect of bills: an indorsement written on a promissory note will afterwards bind the indorser for any sum or time of payment which the person to whom he intrusts the note chooses to insert in it, *Russell v. Langstaffe*, 2 Dougl. 514; see *ante*, Pref. **BILLS**, sect. 55 *et seq.*; *post*, sect. 22.

No acceptance.
Indorsement as
of bills.

4. Stamp.

1. Promissory notes are affected by the Stamp Acts in three ways; 1. As to what amounts to a promissory note so as to require stamp, see Dig. p. ii. **BILLS (EXCHANGE)**, p. 243, note (t); 2. The amount of the stamp necessary when the instrument is made payable at date, after sight, to bearer on demand, &c. *ib.* p. 243, notes (u) (v); 3. What alteration of the instrument will render a new stamp necessary, or otherwise, as by the addition of the words "jointly and severally," held, that this being a material alteration, a new stamp was necessary, *Perring v. Hone*, 2 C. & P. 401; S. C. 4 Bing. 28; S. C. J. B. Moore, 135; or by the addition of the name of a party as

How notes are
affected by the
Stamp Acts.

Promissory
Notes.

a surety, *Clerk v. Blackstock*, Holt, N. P. C. 474; unless made with the consent of all the parties, *Catton v. Simpson*, 8 Ad. & Ell. 136; S. C. 3 Nev. & P. 248; see further *ante*, Pref. BILLS, sect. 65—67; as to the law applying equally to notes as to bills, and as to the statutory provisions relating to bank-notes and bankers' notes, see Dig. p. ii. tit. BANK, BANKS.

5. *Consideration.*

Good considera-
tion presumed.

Failure &c. of
consideration.

21. That a note has been given for a good consideration will be presumed until the contrary appears, in the same manner as in the case of a bill, see *ante*, Pref. BILLS, sect. 70 *et seq.* Where a note has been given under such circumstances that the payee cannot recover on it, the indorsee must prove that he became so for a valuable consideration, *Heath v. Sanson*, 2 B. & Ad. 297. If a party sign his name upon a blank paper, and transmit it to another with a parcel authority to draw a note to a certain amount, an indorsee without proof of consideration cannot recover on the note if drawn to a larger amount than was warranted, *Rowlands v. Evans*, 4 Jur. 460. For cases where there has been a failure or illegality of consideration, see *Jackson v. Warwick*, 7 T. R. 121; *Mann v. Lent*, 10 B. & C. 87; *Obbard v. Betham*, M. & M. 483; *Blogg v. Pinkers*, 1 Ry. & Mee. 125; *Bassett v. Doulgin*, 10 Bing. 43; see also *ante*, Pref. BILLS, *ub. sup.*

6. *Transfer.*

By indorsement.

Foreign notes
transferable.

22. The transfer of notes as of bills may be either by indorsement or by delivery, and indorsements may be either in blank or in full, &c. see *ante*, Pref. BILLS, sect. 55. An indorsement written on a note with a black lead pencil instead of ink, is a writing in law, and gives the indorsee a right to recover on it, *Geary v. Physic*, 5 B. & C. 234; S. C. 7 D. & R. 653. An indorsement of a note by a man's representative is good, *Wathins v. Maule*, 2 J. & W. 243. In an action against the maker of a note payable to A. B. or bearer, if the declaration state that A. B. indorsed it to plaintiff, this indorsement must be proved, *Waynam v. Bend*, 1 Campb. 175; a promissory note being evidence under the money counts only as between the original parties to it, *ib.* A bill payable to the order of drawer, and by him delivered to the plaintiff, cannot be treated as a promissory note drawn in favour of the plaintiff, but an indorsement must be averred as well as delivery, *Prevôt v. Abbott*, 5 Taunt. 786; but a foreign note is transferable in England by indorsement, the Statute of Anne extending to all promissory notes, *Milne v. Graham*, 1 B. & C. 192; *Bentley v. Northhouse*, 1 M. & M. 66. See further *as*

the law relating to the indorsement of bills, which is also applicable to notes, *ante*, Pref. **BILLS**, sect. 77 *et seq.*

Promissory
Notes.

A promissory note given as a security for a debt passes to the holder by act and operation of law, upon an inquisition before the sheriff and a verdict of *felo de se* upon the body of the payee and creditor, *Lambe v. Taylor*, 4 B. & C. 138; S. C. 6 D. & Ry. 188. It passes by grant from the Crown under the sign manual without indorsement, *ib.* So where deposited with a banker as a security, *see v. Hurley*, 1 Stark. 23. See further as to the law of transfer and delivery in the case of bills, which is applicable to notes, *ante*, **BILLS**, sect. 95 *et seq.*

Transfer by
delivery.

Bank of England notes are negotiable abroad as well as in this country, so that the transferee may sue thereon in his own name, *Chaumette v. Bank (Engl.)* 2 B. & Ad. 385; and, being made payable to bearer, are transferable by mere delivery, and cannot be reclaimed by a party, who has lost or been cheated or robbed of them, in the hands of a *bonâ fide* holder, unless taken under circumstances calculated to excite suspicion, *Lovvnds v. Anderson*, 13 East, 130; see also *Miller v. Race*, 1 Burr. 452; *Grant v. Vaughan*, 3 Burr. 1; *Peacock v. Rhodes*, 2 Dougl. 633; *Solomons v. Bank (Engl.)* 13 East, 135, n.; *Snow v. Peacock*, 11 J. B. Moore, 486; *Strange v. Migney*, 6 Bing. 677.

Bank notes how
transferable.

Bankers' notes, being commonly made payable to bearer on demand in any country bank or in London, are also transferable by delivery of the instruments which are so made payable.

Bankers' notes
how transfer-
able.

7. *Payment.*

Three days grace are allowed in the case of notes as of bills, *see v. Harraden*, 4 T. R.; and in a declaration on a note payable on demand, it is not necessary to allege a demand, *Rumball v. Rumball*, 10 Mod. 38; *sed aliter*, as it seems, if the note be payable two months after demand, *Christie v. Fonsich*, Selw. N. P. 352, 10th ed. The law respecting the payment of bills, which is also applicable to the payment of notes, see *ante*, Pref. **BILLS**, sect. 114 *et seq.*; as to the form of the instrument, *ante*, sect. 14 *et seq.*

Days of grace.

8. *Presentment.*

Presentment of notes is only for payment, and not for acceptance as in the case of bills, see *ante*, Pref. **BILLS**, sect. 121 *et seq.* There must be a demand on the maker of a note for payment before the maker can be charged, *Collins v. Butler*, 2 Stra. 1087; and the note must be presented within reasonable time, *Darbishire v. Parker*, 6

Presentment
necessary for
what purpose.

Promissory
Notes.

What not
laches.

East, 3; so upon a note payable on demand or "at sight," an action cannot be maintained until after presentment, *Dixon v. Nuttall*, 1 Cr. M. & R. 307; S. C. 4 Tyrw. 1013; and if a particular place be mentioned in the body of a note, a presentment there is necessary to charge even the maker, *Sanderson v. Boves*, 14 East, 500; and a demand there is a demand on the maker, *Saunderson v. Judge*, 2 H. Bl. 509; but the holder of a banker's note payable at two places has the right to present it at either, and if payment be refused at one, held that there is no laches if it be proved that if payment had been demanded at the other, which was more convenient, the note would have been paid, *Beeching v. Gower*, Holt, N. P. C. 313; so where a servant received on behalf of his master, in payment of goods sold, country bank notes on Friday afternoon, and paid them to his master after banking hours on Saturday, held that there was no laches in not presenting them before the stopping of the bank on the Saturday, *James v. Holditch*, 8 D. & R. 40; see *Williams v. Smith*, 2 B. & A. 496; also further as to the consequence of not presenting in time, and other matters in which the law is the same for notes as for bills, *ante*, Pref. BILLS, sect. 125 *et seq.*; as to making a note payable at a particular place, see *ante*, sect. 16.

9. Notice of Dishonour.

What is notice
of dishonour.

27. Notice of dishonour as to notes relates solely to non-payment, and not to non-acceptance or protest, as in the case of bills, see *ante*, Pref. BILLS, sect. 133. Indorser of a note is not obliged to give notice of dishonour when there are no effects in the maker's hands, *Corney v. Mendez de Costa*, 1 Esp. 302; so in an action on a note payable at a banker's, held that it was not necessary to prove notice to the maker, *Pearce v. Pemberthey*, 3 Campb. 261; see also *Reynolds v. Davies*, in error, 1 B. & P. 625; and as to what have been deemed sufficient notices of dishonour, see *Hedger v. Steaven*, 2 M. & W. 799; *Smith v. Boulton*, 1 H. & W. 3; *Edmonds v. Cates*, 2 Jur. 183; and not sufficient, *Strange v. Price*, 10 Ad. & Ell. 125; S. C. 2 P. & D. 278; 3 Jur. 361. Where a note is in the hands of an indorsee, and he demands payment thereof from the maker, who neglects or omits to pay the same, notice of such refusal or default ought to be given by the indorsee himself to the prior indorsee or indorsees (if more than one), otherwise they will be discharged, *A. v. derson v. George*, Selw. N. P. 389, 10th ed.; see also further as notice, *ante*, Pref. BILLS, sect. 134 *et seq.*

10. *Remedy on Promissory Notes.*Promissory
Notes.

The usual remedy on a promissory note, as on a bill, is an action of *assumpsit*, *Mainwaring v. Newman*, 2 B. & P. 120; for the new rules have provided concise forms. Interest is given on a note of hand from the time of its becoming payable, *Lithgow v. Cooper*, 1 Coop. 22; if the note be payable on demand, interest runs from the date of the instrument, but from the time of the demand, *White v. White*, 4 B. & C. 327. As to the Statute of Limitations applicable to notes payable on demand, that begins to run commonly from the date of the note, *Christie v. Fonsick*, Selw. N. P. C. 352, ed.; but where the note was payable two years after demand, that the statute did not begin to run until two years after demand of payment had been made, *Thorpe v. Booth*, 1 Ry. & Moo. S. C. nom. *Thorpe v. Combe*, 8 D. & R. 347; see further as to legal proceedings and defences to the action, *ante*, Pref. BILLS, 158.

Form of action.

Payment of
interest.Statute of Limi-
tations, &c.

No. CCLIX.

Common Form of a Promissory Note.

[p(a)].

London (b), 1 Jan. 1844.

I, (a) (b) months after date (b) I promise to pay (c) to C. D. or (d) [at Messrs. A. B. & Co. bankers, Lombard Street (e)] the sum of one hundred pounds value received (f).

A. B. (maker) (g).

Payable at Messrs. A. B. & Co. (h)

Indorsed (i) E. F. (first indorser)

G. H. (second indorser)

As to the stamp duty on promissory notes, see *ante*, sect. 20.As to the date of place and time, see *ante*, sect. 10, 11.As to the effect of these words, see *ante*, sect. 12.As to the effect of these words, see *ante*, sect. 14, 15, *et seq.*Effect of inserting the place of payment in the body of the note, see *ante*, 16.As to these words, see *ante*, sect. 17; and as to the consideration, sect. 21.Effect of the maker's signature, see *ante*, sect. 18.Effect of inserting the place of payment at the foot of the note, see *ante*, 16, 25.Law as to transfer by indorsement and delivery, see *ante*, 22—24.

Checks.

III. CHECKS.

- | | |
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| <p>1. <i>Definition and Nature of the Instrument.</i>
 <i>Particular Properties.</i></p> <p>1. <i>Form of the Instrument.</i></p> <p>2.—1st. <i>Place where dated.</i></p> <p>3.—2d. <i>Date or Time.</i></p> <p>4.—3d. <i>Banker on whom drawn.</i></p> <p>5.—4th. <i>Payee.</i></p> <p>6.—5th. <i>Drawer's Signature.</i></p> <p>7.—6th. <i>Crossing the Check with Banker's Name.</i></p> <p>8.—7th. <i>Indorsement.</i></p> <p>2. <i>Acceptance and Payment.</i></p> <p>9. <i>Liability of Banker.</i></p> | <p><i>Marking Amounts to Acceptance.</i></p> <p>10. <i>Banker's Liability as to the Payment of Checks.</i></p> <p>3. <i>Presentment.</i></p> <p>11. <i>Presentment must be made with due diligence.</i></p> <p>12. <i>Consequence of keeping a Check after it is due.</i></p> <p>4. <i>Notice of Dishonour.</i></p> <p>13. <i>Time of giving Notice.</i></p> <p>5. <i>Remedy on a Check.</i></p> <p>14. <i>At Common Law.</i>
 <i>By the Custom of Merchants.</i></p> |
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Definition and nature of the instrument.

SECT. 1. A check or draft on a banker is a written order, requesting him to pay on demand to some person therein named a certain sum of money. It is a negotiable instrument, and in many respects resembles a bill of exchange; but checks are exempt from stamp duty if the provisions of 9 G. 4, c. 49, are complied with, see *infra*, sect 2; also Dig. p. ii. tit. BANK (BANKERS). A check is a legal tender if not objected to, *Wilby v. Warren*, Tidd, 9th ed. 187; but it is not deemed money within the Annuity Act, *Poole v. Cabanes*, 8 T.R. 328. What relates to checks may be considered under the following heads: 1. The form of the instrument; 2. Acceptance; 3. Presentment; 4. Notice of dishonour; 5. Remedy on a check.

Particular properties of checks.

1. *Form of the Instrument.*

2. As to the form of the check it is necessary to observe—

Place where dated.

1st. *The place where it is dated* or supposed to be drawn, which, in order to exempt a check from stamp duty, must, by the 9 G. 4 c. 49, s. 15, be issued from a place within fifteen miles from the residence or house of business of the bankers, see 9 G. 4, c. 49, s. 15; Dig. *ub. sup.*; the place must therefore be truly specified in the check, otherwise it has been held to be void for want of a stamp, *Waters v. Brogden*, 1 Y. & J. 457.

Date or time.

3.—2d. *Date or time of drawing*; a check will, by the same statute, be void for want of a stamp if it be not dated on or before the day on which it is issued, *Allen v. Keeves*; see Dig. *ub. sup.*; see

so further as to the dating such instruments, *ante*, Pref. **BILLS**, *Checks*,
sect. 30.

4.—3d. *The banker on whom drawn*; to bring a check within the Banker on
exemption of the statute it must be drawn upon a banker, *Castleman* whom drawn.
Ray; see Dig. *ub. sup.*

5.—4th. *The payee*; a check to come within the exemption above Payee.
mentioned must be payable to bearer on demand, but the name of the
payee need not be stated. If drawn in the words "Pay No. 1 or
bearer," or "office or bearer," it is sufficient, and this word makes it
transferable by mere delivery, see *ante*, **BILLS**, sect. 95; but a check
without the word "bearer" is not a valuable security within the 7 &
G. 4, c. 29, s. 5; *R. v. Yates*; see Dig. *ub. sup.* As to the effect
of crossing the check with a banker's name, see *infra*, sect. 7.

6.—5th. *The drawer's signature*; as a rule where a check is drawn Drawer's sig-
by several persons not partners, as assignees of a bankrupt, all ought nature.
sign the instrument; but equity will, in cases of bankruptcy and
under particular circumstances, direct that the money may be drawn
out by checks signed by one or more only of the assignees, as where
one is dead and the other abroad, *Ex parte Collins*, 2 Cox, 427; or
where one has absconded, *Ex parte Hunter*, 2 Rose, 363.

7.—6th. *Crossing the check with banker's name*; it is the custom Crossing check.
in London, when the name of a particular banker is written across a
check, to pay that check to no one except to the banker whose name
is so written, *Stewart v. Lee*, 1 Moo. & Malk. 158; the effect of this
is, that bankers refuse to pay a check so crossed to any but a banker,
but it does not preclude the holder of a check from changing the
name of the banker and substituting that of another; and sometimes
the word "Co." only is put in the first instance, with the space for
the particular name to be filled up afterwards, *ib.*; this does not,
however, secure the payment to any particular party or restrict the
circulation of the instrument, *ib.*

8.—7th. *Indorsement* is not a usual or necessary part of this in- Indorsement.
strument, as it passes by mere delivery; but the effect of indorsement
is the same as in the case of bills, to make the indorser liable to the
holder if the check is dishonoured; and it seems that where a check
given by a debtor in favour of his creditor has been indorsed by the
debtor, this has been admitted in evidence against him that he has re-
ceived payment, *Egg v. Barnet*, 3 Esp. 196; but proof of delivery
and payment of a check to the plaintiff is not sufficient evidence of a
debt to support a set off, unless it be shewn upon what consideration
and under what circumstances the check was given, *Aubert v. Walsh*,

Checks. 4 Taunt. 293; see also *Cary v. Gerrish*, 4 Esp. 9; *Bleaby v. Crossley*, 3 Bing. 430.

2. Acceptance and Payment.

Liability of
banker.

9. A banker is bound to pay his customer's checks when he has effects in his hands, otherwise he is liable to an action, there being an implied contract between a banker and a customer that the former should pay the checks of the latter, *Marzetti v. Williams*, 1 B. & Ad. 415. If one banker, holding a check drawn upon another banker, presents it after four o'clock and it is not then paid, but is marked for payment the next day according to the custom of London bankers, this marking is held to be an acceptance, *Robson v. Bennett*, 2 Taunt. 388; but this is binding only as between the banker and his customers, *Boddington v. Schlencker*, 1 Nev. & Man. 540.

Marking
amounts to
acceptance.

Banker's liabi-
lity as to the
payment of
checks.

10. Where a check, drawn by a customer for a sum of money described in the body of the check in words and figures, was afterwards altered by the holder, who substituted a larger sum for that originally inserted, but in such a manner that no person in the ordinary course of business could have observed it, held that the banker could not charge the customer beyond the sum for which the check was originally drawn, *Hall v. Fuller*, 5 B. & C. 750. So where a check really drawn by a customer was by him torn in pieces, but afterwards a stranger, picking up the pieces, pasted them together and presented the instrument so soiled and joined to the banker, held that the latter, who paid the check, could not charge the customer with the payment, *Scholey v. Ramsbottom*, 2 Campb. 485; but where the wife of a customer, at the request of her husband, filled up a check in such a careless manner as to facilitate a fraudulent alteration thereof by the husband's clerk, held that the loss must fall on the customer, it being his fault to employ a person not sufficiently conversant with business, *Young v. Grote*, 4 Bing. 353. So where a banker gave up bills which he had received from his correspondent upon receiving from the acceptor a check for the amount on another banker, held that he was not guilty of negligence, although it turned out that the check was dishonoured, it being done in the ordinary course of business among bankers, *Russell v. Hankey*, 6 T. R. 12; but if the holder of a check takes banker's notes instead of cash, and the banker fails, the drawer is discharged, *Powell v. Roche*, 6 Esp. 76.

3. Presentment.

Presentment
must be made
with due dili-
gence.

11. The holder of a check is bound to present it with due diligence, *Rickford v. Ridge*, 2 Campb. 537; and it seems to be now established that the holder has the whole of the banking hours of the

next day within which to present it for payment, *Rickford v. Ridge*, *ib. sup.*; *Robson v. Bennett*, *ib. sup.*; *Moule v. Brown*, 4 Bing. 1. C. 266; and if he pay it to his bankers before the time at which the bankers, by presenting it at the clearing house, might obtain payment on the same day, the drawer is not discharged by their omitting to present it, although by such delay the check was dishonoured the next day, *Boddington v. Schlenker*, *ib. sup.*

Checks.

12. A check is payable immediately, and the holder keeps it at his peril; and a person taking it after it is due, takes it also at his peril; for such a check stands on the same footing as a bill or note that is overdue, and the party taking it can have no better title than the party from whom he takes it, *Down v. Halling*, 4 B. & C. 390; 1 C. 6 D. & Ry. 455; S. C. 2 C. & P. 11; therefore where a check was lost, and five days after it was taken by a shopkeeper in payment of goods, held that in an action by the loser against the shopkeeper, the jury were properly directed to find for the plaintiff, if they thought that the defendant had taken it under circumstances which ought to have excited suspicion, *ib.*; and the rule, that bills or notes taken after they are due are taken subject to the objections existing against them, applies to checks, unless issued long after their date, *Boehm v. Sterling*, 7 T. R. 423; S. C. 2 Esp. 574; so if a man accept a note or draft of his debtor on a third person, and hold it an unreasonable time before he demands payment of the person on whom it is drawn, and the latter becomes insolvent, the loss must fall upon the creditor, although it was not a negotiable instrument, *Chamberlyn v. Delarive*, Wils. 353.

Consequence of keeping a check after it is due.

4. Notice of Dishonour.

13. A person receiving a check on a banker may either lodge it with his own banker to obtain payment, or may pay it away in the course of trade, although by so doing the notice of its dishonour is postponed a day, one day being allowed for notice from the payee to the drawer, after the day on which notice is given by the banker to the payee, *Robson v. Bennett*, *ib. sup.*; so when a customer pays to his bankers, in the ordinary way, a check drawn upon them by another customer, they are intitled to the same time for ascertaining whether the check will be paid, and giving notice of dishonour (in case it be resolved by them not to pay the check) as in the case where the check is drawn upon other bankers, *Boyd v. Emmerson*, 2 Ad. & Ell. 184; S. C. 4 Nev. & Man. 99.

Time of giving notice.

5. Remedy on a Check.

14. By the general rule of law, a banker's check is not money, it

At common law.

Checks. is a mere *chase in action*, not assignable, and not recoverable by action, and there are it seems cases which may still fall within the general rule; where therefore a trader, after having committed an act of bankruptcy, borrowed a check, but finding his affairs desperate, returned it without having used it, held that his assignees could not maintain trover for it, *Moore v. Bartrup or Barthrop*, 1 B. & C. 5; S. C. 2 D. & Ry. 25. But as checks, like bills and notes, have in favour of trade become negotiable instruments, the remedies on bills and notes are applicable to them.

By the custom of merchants.

No. CCLX.
Form of a Check
or Draft on a
Banker.

No. CCLX.

Common Form of a Check or Draft on a Banker.

No. 505 (c)	London, (a) 1 Jan. 18 (b).
Messrs. C. & Co. (d)	☉
Lombard Street. (e)	Co.
Pay to Messrs. C. & S. or	bearer (f) seven hundred and
ninety-two pounds six shillings	(g) and four-pence.
<u>£792 : 6s. 4d. (g)</u>	T. F. (h)
Indorsed, &c. (k)	

BILLS OF LADING,
see *post*, SHIPPING.

(a) As to the necessity of naming the place where drawn, see *Pref. ante*, sect. 2.

(b) As to the naming the time, see *ante*, sect. 3.

(c) This is merely the private mark of the drawer.

(d) A check must be drawn upon some banker, see *ante*, sect. 4.

(e) The address of the banker is a mere matter of convenience.

(f) As to what is necessary or otherwise to be stated in a check with regard to the payee, see *ante*, sect. 5.

(g) The reason for mentioning the sum in the body of the check, and also in figures in the margin, is the same as in the case of bills, see *ante*, *Pref. Bills*, sect. 32, 41.

(h) The law as to the drawer's signature in the case of bills of exchange is applicable to checks, see *ante*, *Pref. sect. 6*, also *BILLS*, sect. 44.

(i) As to the effect of crossing a check in this manner, see *ante*, *Pref. sect. 7*.

(k) As to the effect of indorsement in the case of checks, see *ante*, *Pref. sect. 7*.

BILLS OF PARCELS, AND BOUGHT-AND-SOLD NOTES.

Distinction between Bills of Parcels and Bought-and-Sold Notes. | 2. *Signature of the Instrument.*
| 3. *Stamp.*

SECT. 1. Bills of parcels are the notes which tradesmen usually give on selling goods by retail: bought-and-sold notes are notes which pass between the vendor and purchaser in commercial matters: they are intitled to consideration since the Statute of Frauds, which renders some note or memorandum necessary as evidence of a contract between the parties, unless in the particular cases there specified, see further Dig. p. ii. tit. FRAUDS (STATUTE); also as to bought-and-sold notes, *post*, NOTES and ORDERS.

Distinction between bills of parcels and bought-and-sold notes.

2. The Statute of Frauds requires the signature of the party to be charged, but no particular form of signature is required; if the name of the vendor is printed, and that of the vendee written by the vendor, that is a sufficient memorandum of the contract to charge the vendor, *see Schneider v. Norris*, 2 M. & S. 286; and although the bill of parcels is not signed, if a letter with a proper signature be connected with the bill of parcels, it will be sufficient to take the case out of the statute, *Saunderson v. Jackson*, 2 B. & P. 238.

Signature of the instrument.

3. Any note or memorandum rendered necessary by the 9 G. 4, Stamp Act, 14, is exempt from stamp duty, see further Dig. p. iii. tit. LIMITATIONS.

No. CCLXI.

No. CCLXI.
Bill of Parcels.

Common Form of a Bill of Parcels.

London, 24th October, 18 .

Messrs. J. S. & Co.

Bought of T. N. & C. (a) cotton yarn and piece goods (*here follows a list of the articles sold, with the particulars and quantity, with the prices annexed.*)

No. 3, Freeman's Court, Cornhill.

(a) If the name of the vendor be in print, it is nevertheless sufficient to charge on if that of the vendee be written, see *ante*, Pref. sect. 2.

No. CCLXII.
Another Form.

No. CCLXII.

Another Form.

Mr. J. M.

Bought of S.

Tons.

Teneriffe barilla, wg. 50 : 5 : 1 : 12

Dft 12 lb. per ton . . . 5 : 1 : 12

Net 50 at £13 per ton in } £
bond . . . }
Discount . . .

Ex Prince Royal.

£

Payable per approved bills not exceeding two months.

BILLS OF SALE OF GOODS.

1. *Form of a Bill of Sale.*
Absolute or Conditional.

Effect of Possession, or the want of it.
2. *Stamp.*

Form of a bill
of sale.

Absolute or
conditional.

SECT. 1. A bill of sale is, in its operation and form, precisely similar to a bargain and sale; but the bill of sale is of such things as do not savour of the realty, as goods, household furniture, &c. It may be either absolute, when the vendor wishes to convey the entire property to the vendee; or conditional when the conveyance is subject to a condition for making the same void on payment of the money advanced upon the goods. When such a deed is executed, the property in the goods passes to the vendee by delivery. But when it is made absolute to a person, actual possession must "accompany and follow the deed," otherwise it is void. A delivery of a single article in the name of the whole will not of itself give the purchaser such a possession as will profit him against creditors; but in the case of a conditional bill of sale, the vendor's continuing in possession will not void the deed, 3 Co. 80; *Edwards v. Harben*, 2 T. R. 587. Therefore if an assignment be made of household furniture, and the assignor continues in possession, it is not protected against an execution, at the suit of a creditor of the assignor, unless the assignment were notorious, *Armstrong v. Baldock*, Gow, 33; and see *Smith v. Russell*, 3

Taunt. 400. And it is not enough that a person is put in to keep possession jointly with the assignor, *Wordall v. Smith*, 1 Camp. 333. If the vendee suffers the late owner to interfere or exercise any act of ownership, it shall avoid the bill of sale as against a *bonâ fide* execution, *Paget v. Perchard*, 1 Esp. 205; for want of possession on a bill of sale is a notorious badge of fraud, which ought to be left to the jury, *Martin v. Podger*, 2 Bl. 702; S. C. 5 Burr. 2631. And a conveyance of chattels, unaccompanied with possession, is void, although in the same instrument be contained a valid mortgage of leasehold buildings, in which the chattels are situated, *Reed v. Blades*, 5 Taunt. 212. And to prove a bill of sale fraudulent, declarations made by the vendor at the time of executing it are admissible, but not those made at another time, *Phillips v. Eamer*, 1 Esp. 355; but a bill of sale made for a valuable consideration, unaccompanied with the possession, is valid against the vendor, and also against a creditor, with whose knowledge and assent it was given, *Steel v. Brown*, 1 Taunt. 381. As to the effect of a bill of sale from the sheriff, see *Observations, post*, No. CCLXV.

2. An absolute bill of sale is charged as a conveyance with an Stamp. *ad valorem* stamp, on the consideration money, see CONVEYANCE. As to a conditional bill of sale, see MORTGAGE.

—◆—
Assignments of Bills of Sale, see ante, ASSIGNMENTS.

—◆—
No. CCLXIII.

Absolute Bill of Sale.

Know &c. that I (*V.*) of &c. in conson of the sum of £ to me in hand pd by (*P.*) of &c. at &c. the rect whof I do hby acknge *Have* granted bargained and sold and by &c. *Do* grant &c. unto the sd (*P.*) all the goods and household stuff and imple-
ments of husbandry and all other goods and chattels mentd in
the schedule hereunto annexed *To Have* &c. all and singr the
sd goods household stuff and implements of husbandry and evy
of them hby bargd and sold unto and to the proper use and
behoof of the sd (*P.*) his exs ads and ass for ever freely quietly
peaceably and wით any contradiction claim disturbance or

No. CCLXIII.

*Absolute
Bill of Sale.*

Grant.

Habendum.

No. CCLXIII.
*Absolute
Bill of Sale.*

Warranty.

hinderance of any psn whatsr and witht any acct to me or to any other whomsr to be made answered or hrafrtr to be rendered so that neither I (V.) nor any or. psn for me or in my name any right title int or demand of to or for the sd goods &c. or any pt or pts thof ought to exact challenge claim or demand at any time or times hrafrtr but from all action right este title claim demand posson and int thof shall be wholly barred and excluded by force and virtue of these prests *And* I the sd (V.) for myself my exs and ads all and singr the sd goods and household stuff unto the sd (P.) his exs ads and ass agst me the sd (V.) my exs and ads and evy or. psn and psns whomsr shall and will warrant and for ever defend by these prests of which goods I the sd (V.) have put the sd (P.) in full posson (a) by delivering him one chair in the name of all the sd goods and chattels at the sealing and delivery hereof *In witness &c.*

A. B. (*vendor*) [Seal]

Signed sealed and delivered by the within-named (or "above-named," *as the case may be*) (V.) being first duly stamped and at the same time full posson of all and singr the goods chattels and effects within-mentd (or "above-mentd") to be bargd and sold were given by the sd (V.) to the sd (P.) by the sd (V.'s) delivering to the sd (P.) one chair in the name of the whole of the sd goods and preses in the presence of C. D.

Or Delivery of Possession may be indorsed thus.

Memorandum—On the day and yr within-written (or "on the day of ") possession of the goods and preses within bargd and sold was delivered by the sd (V.) to the sd (P.) by the sd (V.'s) giving to the sd (P.) one chair &c.

No. CCLXIV.
*Conditional
Bill of Sale.*

Testatum.

No. CCLXVI.

Conditional Bill of Sale of Goods and Merchandize.

This Indre made &c. see *ante*, No. LXXXVI. Betn A. B. of &c. of the one pt and C. D. of &c. of the or. pt *Witnesseth* That

(a) As to the efficacy of this clause, see *Obs.*

for and in conson of the sum of £ in &c. pd by the sd C. D. to the sd A. B. the rect whereof &c. (a) He the sd A. B. *Hath* granted bargained sold and confirmed and by these prests *Doth* grant &c. unto the sd C. D. his exs ads and ass *All those* &c. (*here name the goods and merchandize*) *To Have and to Hold* the sd goods and merchandize and all and singr or. the preses hby bargained and sold for ever And the sd (*assignor*) for himself &c. (*clause of warranty, as in last Precedent*) *Provided* *always* and it is hby agrd by and betn the sd pties to these prests that if the sd A. B. his exs ads or ass or any of them do and shall well and truly pay or cause &c. unto the sd C. D. his exs ads or ass the sum of £ on the day of for the redemption of the sd hby bargained goods Then these prests and evy clause article condon and thing herein contd shall cease determine and be absolutely void *And* the sd A. B. doth hby for himself his exs ads and ass covt and grant with and to the sd C. D. his exs &c. in manner following that is to say That he the sd A. B. his exs or ads shall and will well and truly pay or cause &c. the sd sum of £ at the time and in the manner afd *And* in case deft shall happen to be made in paymt of the sd sum of £ or any pt thof on the sd day of according to the true intent and meaning of these presents Then the sd C. D. his exs ads and ass shall and may peaceably and quietly have rece and enjoy to his and their own proper and absolute use and behoof for ever the sd hby bargained goods and preses and evy pt thof with all and singr the apts witht any lful let suit trouble molestation or denial of the sd A. B. his exs ads or ass or any or. psn or psns claiming under him *And* the sd C. D. for himself his exs &c. doth hby covt &c. with the sd A. B. his exs &c. that he the sd C. D. his exs &c. shall and will immly after the rect of the sd sum of £ according to the true intent and meaning of the condon afd and upon the request of the sd A. B. his &c. well and truly deliver unto the sd A. B. his &c. the sd goods in as good plight and condon [fire and or. inevitable accidents excepted] as the same and evy of them at this present time now are Signed sealed and delivered &c. (*see last Precedent.*)

No. CCLXIV.
Conditional
Bill of Sale.

Habendum.

Warranty.

Proviso for
redemption.

Covenant to
pay, &c.

Covenant to re-
deliver goods
upon payment.

(a) This may be filled up from the last Precedent.

No. CCLXV.

Goods taken in
Execution.

No. CCLXV.

*Bill of Sale from the Sheriff of Goods taken in
Execution.*

Obs. 1. Where goods taken in execution were put up to sale, and the purchaser took a bill of sale from the sheriff, but permitted the vendor to continue in possession, who afterwards executed another bill of sale to another party, held that the first bill of sale was valid, and the purchaser was intitled to recover, *Kidd v. Rawlinson*, 2 B. & P. 59; 8. C. 3 Esp. 52; so where the purchaser, having taken a bill of sale from the sheriff, let the goods to the vendor at a rent, which was actually paid, held that he had a title, which could not be impugned as fraudulent by other creditors having executions against the same party, *Watkins v. Birch*, 4 Taunt. 823.

2. As to the law relating to executions, see Dig. p. ii. tit. EXECUTION; and as to the relief of the sheriff in case of sales by him, see Dig. p. iii. tit. INTERPLEADER.

3. An *ad valorem* stamp as on a conveyance, see *post*, CONVEYANCES.

Recital of writ
of execution.

Execution of
writ.

Valuation of
goods.

Sale to creditor.

This Indre &c. see *ante*, No. LXXXV. between C. B. of *kc.* Esq. sheriff of the sd county of the one part and (*creditor*) of *kc.* of the other part *Whas* a writ of *fiери facias* issuing out of her Maj. Court at *West.* directed to the sd C. B. was recd at the office of the under-sheriff commanding him that he should cause to be levied of the goods and chattels of G. L. within his bailiwick a certain debt of £ which the sd (*creditor*) had recovered against him in the said court together with the sum of £ for damages costs and chas which the said (C.) had sustained and expended by reason of his suit *And whas* the said C. B. hath by virtue of the sd writ taken in exon the stock and utensils in trade household furniture goods chattels and or. effects and things parlarly mentd and set forth in the schedule hereunder written being in and upon the messuage yard stable and or. buildings and preses now in the occupn of the sd G. L. situate and being in F. in the county afd and hath caused the same goods chattels and effects to be appraised by R. S. a psn of competent skill who hath valued the same at the sum of £ *And whas* the sd C. B. hath agreed to assign all the sd stock &c. so taken in exon as afd and parlarly mentd

&c. unto the sd (C.) for the sum of £ at which the same
 have been valued as afd *Now this Indre witnesseth* That in
 possession of the sum of £ of lawful money of G. B. by the
 sd (C.) to the sd C. B. in hand paid at or before the exon of these
 represents the payment and receipt of which sd sum of £ and
 that the same is in full for the absolute purchase of the sd stock
 and utensils in trade household furniture and or. goods chattels
 and effects he the sd C. B. doth hereby acknowledge and of and from
 the same and every part thereof doth acquit release and discharge the sd
 (C.) his executors and assigns for ever *He* the sd C. B. as sheriff as
 far as he lawfully can or may by virtue of his sd office of
 sheriff and not further or otherwise *Hath* bargained sold assigned transferred
 and set over and by these presents *Doth* bargain &c. unto the sd
 (C.) his executors and assigns *All* and sing the stock and utensils in
 trade household furniture goods chattels and effects particularly
 mentioned and set forth in the schedule hereunder written and which
 have been taken in execution by the said C. B. by virtue of the sd
 writ of *fiery facias* of all which sd goods chattels and effects hereby
 bargained sold and assigned the sd C. B. at the time of the sealing
 and delivering thereof hath delivered or intends to deliver or cause
 to be delivered possession to the sd (C.) *To Hold* the sd stock &c.
 unto the sd (C.) his executors &c. as his and their own goods chattels
 and effects absolutely *In witness* whereof the sd C. B. hath hereto
 set his hand and seal of office and the sd (C.) hath set his hand
 and seal the day and year first above written.

No. CCLXV.
 Goods taken in
 Execution.

Testatum.

The Schedule above referred to.

(Add the schedule.)

(Signature)

The above written having been first duly stamped was signed
 with the name of C. B. sheriff of the county of F. sealed with
 his seal of office and delivered as his act and deed by J. C.
 gent. under-sheriff of the sd county in the presence of W. G.

Signed sealed and delivered by
 the above named (C.) in the
 presence of

R. M.

Common Receipt for Consideration-money by Sheriff.

Mem. That at eight o'clock in the morning of the day of the
 date of the above-written indre T. H. the bailiff of the within-

No. CCLXV. *named sheriff on the pt and behalf of him the sd sheriff and by his order delivd to the above-named (C.) one chair in the name and as the symbol of all the goods chattels and effects mentd in the above-written schedule or inventory in my presence*
Goods taken in Execution.
 C. L.

No. CCLXVI.

No. CCLXVI.

Payment of Money.

Bill of Sale for securing the Payment of a Sum of Money (with Variations, where it is given only as a Collateral Security, accompanied with a Bond or Warrant of Attorney).

Obs. On the assignment of property by an instrument of this sort, there must be a complete change of possession, or the deed will be void against creditors; it is not enough that a person is put in to keep possession jointly with the vendor, *Wordall v. Smith*, 1 Campb. 333.

Recital of debt.

This Indre &c. see ante, No. LXXXV. betn (debtor) of &c. of the one pt and (creditor) of &c. of the or. pt Whas (a) the sd (debtor) is indebted unto the sd (creditor) in the sum of £

And agreement to assign goods to creditor.

and being at present unable to pay the same hath agreed to make such assnmt or bill of sale to him of the goods chattels furniture and effects mentioned in the schedule hunder written for better securing the payment thof as hinaft is expsd (b)

Testatum.

Now this Indre witnesseth That in pursuance of the sd agrt and in consideration of the sum of £ so justly due and owing (c) to the sd (creditor) by the sd (debtor) at the time of

Sale to a purchaser.

(a) If the bill of sale be made to a purchaser, say, " *Whas the sd (purchaser) hath contracted with the said (vendor) for the absolute purchase of the sevl goods chattels furniture and effects mentd in the schedule hereunder written.*

(b) If the bill of sale be intended to accompany a bond or warrant of attorney as a collateral security, say, " *Whas the sd (debtor) hath exted a bond (or "warrant of atty") in writing under his hand and seal bearing or intended to bear even date with these prests in the penal sum of £ with a condition (or "defeasance") thereunder written for making void the same on payment of the sum of £ and int after the rate of five per cent. per ann. on the day of now next ensuing And whas it hath been agrd that for better securing the payment of the sd sum of £ the sd (debtor) shall exte such bill of sale of the goods and effects mentioned in the schedule hereunder written as hnafter is expsd.*" Now &c.

(c) If the sale be to a purchaser, the consideration of a debt must be omitted.

sealing and delivery of these presents as hnbefe is mentd
 ich the sd (*debtor*) doth hby expssly admit and acknge and
 o for and in conson (*a*) of the sum of 5s. of lful money to the
 (*debtor*) &c. pd by &c. the receipt &c. *He* the sd (*debtor*)
 ith granted bargd and sold and by these prests *Doth* grant
 unto the sd (*creditor*) his exs ads and ass *All* and singr the
 usehold furniture beds bedding plate china linen glass books
 tures and or. the goods chattels and effects mentd or de-
 ibed in or by the inventory thof hunder written or hrunto
 rexed and all the este right title int property claim and de-
 nd whatsr both at law and in equity of him the sd (*debtor*)
 in or to the same resply *To Have and to Hold* and take and
 oy the sd household and or. furniture goods &c. and all and
 gr or. the preses hnbefe bargd and sold or mentd or intended
 to be with their and evy of their rights members and appts
 to the sd (*creditor*) his exs &c. to and for his and their own
 oper use and bent subject nevss to the provo for redemption
 the preses hnafttr contd that is to say Provided always and
 ese prests are upon this expss condon that if the sd (*debtor*)
 s exs or ads do and shall well and truly pay unto the sd (*cre-*
tor) his exs ads or ass at or in the dining-hall of the Inner
 mple London betn the hours of ten and twelve of the clock
 the forenoon the sum of £ of lful money of the U. K. of
 .B. and Ire. of English value and currency with int for the same
 ter the rate of five *per cent. per ann.* on the day of
 ext ensuing the date of these prests witht any deduction or
 atement whatsr [other than the present or any future tax upon
 roperty or income or or. tax in the nature thf paye by the sd
reditor) in respect of the same] then and in such case the bar-
 ain and sale or or. assurance hnbefe made (*b*) shall cease and
 rthwith be delivd up to be cancelled *And* (*c*) the sd (*debtor*)
 oth hby for himself his hrs exs and ads covt promise and agree
 ith and to the sd (*creditor*) his exs ads and ass in manner
 ollowg that is to say That he the sd (*debtor*) his exs or ads

No. CCLXVI.
*Payment of
 Money.*

Habendum.

Proviso for re-
 demption.

Covenant by
 debtor to pay
 money.

(a) If the sale be to a purchaser, this part is unnecessary.

(b) If the bill of sale accompany a bond or warrant of attorney, say, "togeth with the sd hnbefe in pt exted bond (or 'warrant of atty')." "

(c) Where it is a purchase, this covenant must be omitted.

No. CCLXVI.
Payment of
 Money.

shall and will well and truly pay or cause to be pd unto the sd (creditor) his exs ads and ass the sd sum of £ at the time and after the rate and in the manner afd (a) apptd for the payment thf accdg to the time intent and meang of these prests And lastly the sd (debtor) for himself &c. (clause of warranty, see ante, No. CCLXIII.) (b)

—◆—
Memorandum of Delivery of Possession, see ante,
 No. CCLXIII.

—◆—
Bills of Sale of Ships &c. see SHIPPING.

BONDS.

- | | |
|---|--|
| 1. <i>Definition of a Bond.</i>
<i>Distinction between Obligor and Obligee.</i>
<i>Penalty.</i>
<i>What recoverable on a Bond.</i> | 3. <i>Effect of a Bond joint or joint and several.</i>
4. <i>Contribution by Co-Sureties.</i>
5. <i>Form of a Bond.</i>
6. <i>Consideration.</i>
7. <i>Condition of a Bond.</i>
<i>Illegality of, vitiates Bond.</i>
<i>Construction of the Condition.</i>
8. <i>Form of Condition.</i>
9. <i>Stamp.</i> |
| 2. <i>Who may or may not be Parties to a Bond.</i>
<i>Bond joint only.</i>
<i>Joint and several.</i>
<i>Several only.</i> | |

Definition of a bond.

SECT. 1. A bond or obligation is a deed whereby one called the obligor binds himself to one called the obligee to pay money or do

Covenant by creditor.

(a) If the bill of sale accompany a bond or warrant of attorney, say, "in the manner hnbeft and in the condon (or 'defeazance') of the sd in pt recited bond (or 'warrant of atty') apptd for the paymt thof accorly."

(b) If it be necessary, add here: "And the (creditor) for himself &c. doth covt &c. with the said (debtor) by these prests that he the sd (creditor) his exs &c. shall and will immly after the rect of the sd sum of £ accg to the true intent and meaning of the condon afd upon the request of the sd (debtor) well and truly deliver unto the sd (debtor) &c. the said goods &c. and all or the prests which the sd (creditor) recd of the sd (debtor) at or before the sealing and delivery of these prests in as good plight and condon as the same and evy of them at this present time now are."

me other thing. In *Underwood v. Harwood*, 10 Ves. 226, the obligee is taken for the person bound, that is to say, in the vulgar use of the word, the person obliged; but as this is not the legal use of the term, it is proper to observe the distinction. When a bond is simple, or single, that is, without a condition, it is properly an obligation; but when a condition is annexed, as is usually the case, it is a double bond, most commonly called a bond, Shep. T. 367. The obligor is generally bound in a penal sum, double the amount of the sum intended to be secured, and on his failing to perform the condition the bond was formerly forfeited at law, but equity interposed to restrain the obligee from taking more than his principal and interest. And in pursuance of the same principle, the 4 & 5 Anne, 16, provides, that when a bond is given to secure the payment of a sum of money, a tender of the principal sum due, with interest and costs, shall be a full satisfaction of such bond, though the same at law may be forfeited. By an equitable construction of this statute, it is held, that interest cannot be recovered upon a bond beyond the amount of the penalty, it being a settled point, both at law and in equity, that the penalty is the debt, except in particular cases, *Wild v. Clarkson*, 6 T. R. 303; *Clark v. Seton*, 6 Ves. 415; see further fig. p. ii. tit. BONDS.

2. All persons having a legal capacity to contract may, in general, bind themselves in bonds and obligations, 4 Co. 124; 5 Co. 119. But an infant cannot bind himself in a bond with a penalty, not even by necessities, 1 Lev. 86; *Fisher v. Monbray*, 8 East, 330. So the bond of an idiot, or of one that is drunk at the time of making the bond, is void, 2 Stra. 1104; Bull. N. P. 172. So of a *feme covert*, except the husband assents, 5 Co. 119 (see AGREEMENTS, Pref. sect. 2). So a bond given by a man in duress, that is, unlawful imprisonment, is void, 2 Inst. 482; 4 Inst. 97; Allen, 92. And one partner cannot bind the others by bond, unless an express power to that effect be given, *Harrison v. Jackson*, 7 T. R. 207. Executors and administrators are bound by the obligation of the testator, although not named, but the heir is not bound, unless he is named. And the heir, on a effect of personal assets in the hands of the executors and administrators, is bound to discharge the same, provided he has real assets, 1 Comm. 340; Bull. N. P. 175. If the obligation be made to one and his heirs, the executors and administrators shall take advantage of it, Shep. Touch. 376. When two or more bind themselves in a bond by the words, "We bind ourselves," and say no more, the bond is joint; but if it be thus, "We bind ourselves, and each of us, our heirs, and each of our heirs &c.," the bond is joint and several &c.,

Bonds.

Difference between obligor and obligee.

Penalty.

What recoverable on a bond.

Who may or may not be parties to a bond.

Bond joint only.

Joint and several.

- Bonds.** — Shep. Touch. 376. If it be expressed in a bond that two or more persons are jointly and severally bound, and one of them does not execute the bond, it is not the joint bond of those who executed it, but only the several bond of each of the parties signing, *Elliot v. Davis*, 2 B. & P. 338. If in a bond conditioned for the payment of a sum, it be worded thus, "For which payment to be well and faithfully made we bind ourselves, and each of us for himself for the whole and entire sum of £ ," it has been held that this was a several bond only, and that the obligees, by removing the seal of one of the obligors, did not render it void as to the others, *Collins v. Prosser*, 1 B. & C. 682.
- Several only.** 3. When the obligation is joint, the obligee must sue the obligors altogether, Shep. Touch. 375. When the obligation is joint and several, he may either sue them altogether, or each of them separately; but he may not sue some and spare the rest, 1 Saund. 291. If the bond be joint, and one of the obligors die, the survivor only is charged; but it is otherwise where the bond is joint and several, 2 Vern. 99.
- Effect of a bond joint or joint and several.** 4. The right of contribution, as between co-sureties, is not precisely the same at law as in equity. Where several parties are bound, they must be bound in one and the same penalty, to give co-sureties a right of action for contribution; but if each is bound for a distinct penalty, it does not make the one bound for the penalty of the other. For the remedy at law is founded on the principle, that one pays that to which all are liable, *Collins v. Prosser*, 1 B. & C. 682. On the other hand, contribution in equity being founded on a principle of justice and equality, it is immaterial whether co-sureties give joint or separate bonds, except that in the latter case they must contribute to the amount of the security; but if they are all jointly bound in one obligation in a penal sum, they must all contribute equally, *Deering v. Earl of Winchelsea*, 2 B. & P. 270.
- Contribution by co-sureties.** 5. Although the usual manner of framing a bond is the best, yet any words in a deed, sealed and delivered, which appears on the face of it to have been intended as a bond, will make a good obligation, Cro. Car. 129. An obligation must be on parchment or paper, and sealed (which is indispensably requisite), otherwise it is void, Co. Litt. 35, b.; Shep. Touchst. 376; Dyer, 19, a.; but signing is not essential to its validity, 2 Cro. Eliz. 642, nor any particular form of delivery, Co. Litt. 36, a. If the bond be altered by the obligee, although but in an immaterial point, he vacates the deed, 10 Co. 92; Bull. N. P. 267. A release of a bond, or a dispensation, with its
- Form of a bond.**

ditions, must be by deed, *Sellers v. Bickford*, 8 Taunt. 31; S. C. B. Moore, 460.

Bonds.

. The want of a consideration to a bond affords no ground of objection; but if there be any thing illegal in the consideration, the defendant is allowed to plead it in bar to the action, *Fallowes v. Worl*, 7 T. R. 477.

Consideration.

. If the condition of a bond be to do that which is unlawful, impossible, or so insensible and uncertain that the meaning cannot be known, it is void, *Sheph. Touch. 372*; 2 Salk. 462. So if the condition be against the provisions of a statute, the rules and claims of equity, and the dictates of morality, it is void at law and in equity, *onbl. Eq. 228*. Bonds entered into for particular purposes are declared void by several statutes, as by 5 & 6 Ed. 6, c. 16, bonds given

Condition of a bond.

Illegality of, vitiates bond.

buying and selling offices; by 13 Eliz. c. 5, for avoiding the debt duty of others; by 16 Car. 2, c. 7, and 9 Ann. c. 14, for procuring the return of a member of Parliament; by 12 Ann. c. 16, as upon usurious contracts. The condition of a bond being in favour of the obligor, as protecting him from the penalty, 1 Saund. it is literally construed, and may be restrained by the recital; as where, in the condition, it was recited, that a sheriff had appointed defendant bailiff of a hundred within his county, it was adjudged that the words "all warrants," in the condition itself, should be understood only, all warrants which were directed to the defendant, as bailiff of the said hundred, and not other warrants, cited in *Lord Arlington v. Merrick*, 2 Saund. 411, 412. This rule of construction more strictly observed in favour of sureties, where, in the condition the bond, it was recited, that the surety was bound for six months only, although the words in the condition were indefinite, "during the time he shall continue &c." *Lord Arlington v. Merrick*, 2 Saund. 411. So a bond entered into by a surety for the faithful service of a clerk to any person or persons (not forming an incorporated company) becomes void as soon as there is any change in the firm, death or otherwise, *Wright v. Russell*, 3 Wils. 532; S. C. 2 L. 934; *Barker v. Parker*, 1 T. R. 287; unless the condition be worded as to provide for this contingency.

Construction of condition.

8. If the words at the close of the condition, "Then this condition shall be void," be omitted, the condition is void, but the obligation remains in force; but the omission of the subsequent words, "or else shall remain in full force," is immaterial, *Sheph. Touchst. 371*. If the condition of a bond be to pay money, or to do any other thing, and no time be named in the condition, it is now settled that the bond shall be payable on the day of the date, *Farquhar v. Morris*, 7 T. R.

Form of condition.

- Bonds.** 124. When no place is mentioned for the performance of the condition, it must be done to the person of the obligee, if he be within the four seas. But although the place be named, yet if the obligee receive payment in any other place, it is sufficient to save the bond; and by the 4 Anne, c. 4, sect. 12, such payment may be pleaded in bar of any action, Hargr. Co. Litt. 212, n.
- Stamp duty, amount.** 9. The amount of the stamp duty on bonds is regulated by 55 G. 3, c. 184, sched. p. i., on the construction of which Act, see Dig. p. ii. tit. BONDS. Where a bond is not otherwise charged, it is liable to a common deed stamp of 1l. 15s., and the progressive duty of 1l. 5s. for every 1000 words above the first 1000. If several persons are bound under one penalty for the performance of the same matters, one stamp is sufficient, *Godson v. Forbes*, 1 Marsh. 531. If the stamp be insufficient, it is a ground of nonsuit, 2 M. & S. 88; 2 Price, 20; but it is sufficient if the instrument bear a proper stamp when it is produced, 2 Marsh. 485; 7 Taunt. 147.
- Exemptions.** Bonds by collectors of land tax are exempted from stamp duty, by 3 G. 4, c. 88; so receivers of land and assessed taxes, by 4 & 5 W. 4, c. 60, sect. 15; so bonds to prosecute commissions or fiats of bankruptcy and assignments thereof; also replevy bonds and assignments thereof are exempt from stamp duty by 5 G. 4, c. 41; so bonds by treasurers of savings banks, and also administration bonds for effects of depositors, by 9 G. 4, c. 92, sect. 41; so bonds by owners of vessels to commissioners of customs, 3 & 4 W. 4, c. 53, sect. 19; so bonds by licenced dealers in stamps, by 3 & 4 W. 4, c. 98, sect. 1; so bonds by treasurer &c. of loan society, 5 & 6 W. 4, c. 23, sect. 5; 3 & 4 Vict. c. 110, sect. 12; so bonds by collectors of highway rates, by 5 & 6 W. 4, c. 50; and East India bonds, on payment of a composition, by 5 & 6 W. 4, c. 64, sect. 4; as to other exemptions under 55 G. 4, c. 184, sched. p. i., see Dig. p. ii. tit. BONDS.

OBLIGATORY PART OF A BOND.

No. CCLXVII.

*From One to
One.*

No. CCLXVII.

From One to One.

Know all Men by these prests That I (obligor) of &c. am held and firmly bound to (obligee) of &c. or his certain atty exs ads and ass in the sum of £ *(double the condon, see Pref.*

f lful money of Gt Britain to be pd to the sd (*obligee*) No. CCLXVII.
 certain atty exs ads or ass to which paymt well and *From One to*
 e made I bind myself my hrs (a) exs and ads firmly *One.*
 prests
 with my seal and dated this day of in the
 Lord 18 and in the yr of the reign of

No. CCLXVIII.

From Two or more to One.

ill &c. see *last precedent* That we (*obligor*) of &c. and
 r) of &c. or (*surety*) of &c. are held &c. to (*obligee*) of
 . to be pd &c. to which paymt we bind ourselves and
 is and each of our hrs exs and ads firmly by these

with our seals and dated &c.

No.
 CCLXVIII.
*From Two or
 more to One.*

No. CCLXIX.

From One to Two or more.

ill &c. see *supra*, No. . That I (*obligor*) of &c.
 c. to (*obligees*) or either of them their or either of their
 ties exs ads or ass in &c. to be pd &c. to which &c. I
 elf &c.
 &c. Dated &c.

No. CCLXIX.
*From One to
 Two or more.*

No. CCLXIX.—2.

From One to a Corporation.

ill &c. see *ante*, No. CCLXVII. That I (*obligor*) of
 eld &c. to (*obligees*) their certain atties successors or
 sum of £ of &c. to be pd to the (*obligees*) their
 ich paymt &c.

No.
 CCLXIX.—2.
*From One to a
 Corporation.*

(a) As to the naming of the heirs, see Pref. sect. 2.

CONDITIONS OF BONDS.

No. CCLXX.

*To Account
(Receiver).*

No. CCLXX.

*Bond from a Receiver.**Obs.* As to the form &c. of the condition, see Pref. sect. 8.

Obligation.

Know all &c. That &c. see *ante*, No. CCLXVII.

Recitals.

Whas the above-named (*obligee*) hath retained and employed the above-bounden (*obligor*) to be the receiver of the rents issues and prfts of all and singr his the sd (*obligee's*) messes lds and tents situate lying and being in &c.

Condition.

Now the condition of this obligation is such That if the sd (*obligor*) shall and do from time to time and at all times hrafr as often as he shall be thereunto requested by the sd (*obligee*) his hrs exs ads or ass well and truly pay or cause to be pd unto the sd (*obligee*) his hrs &c. all such sum and sums of money as shall be by him had and recd of the sd rents issues and prfts and render to the sd (*obligee*) his hrs &c. a true and just acct of all and evy sum and sums of money that shall be by him recd pd laid out and disbursed of from for or on acct of the sd lds or the rents &c. thof or of for or on acct of the sd (*obligee*) his &c. *And also* well truly justly and honestly in evy respect behave himself in the sd office or employment of receiver of the sd rents &c. Then this obligation to be void or else to be and remain in full force and virtueSigned sealed and delivered
by the above-named A. B.
(being first duly stamped)
in the presence ofA. B. (*obligor*)

C. D.

E. F.

No. CCLXXI.

By Treasurer.

No. CCLXXI.

Bond from the Treasurer of a Company.

Obligation.

Know all &c. That &c. see *ante*, No. CCLXVII.Recital of Act
of Parliament.*Whas* an Act of Parliament was passed &c. (*recite Act for forming a railway or a canal company &c. as the case may be*)

it was among or. things enacted That it shd be lful for the Compy of Proprietors at any General Meeting assembled and were thereby required from time to time to nominate and appt Treasurer and Clerk and such or. officers as they shd think or And shd take sufficient secty from evy such treasurer or officers having the care and custody of any money to be l or recd by virtue of the sd Act for the due exon of the fice as the sd Compy of Proprietors shd think proper And at a General Meeting of the Compy of Proprs of n &c. the above-bounden (*obligor*) was appted Treasurer e sd Compy And upon such apptmt the sd (*obligor*) agd ter into a bond in a sufficient penalty for insuring to the ompy the faithful discharge of his duties in the sd office n pursuance of such agt hath executed the above-written subject to such condon for making the same void as hnafr ttd

No. CCLXXI.
By Treasurer.

Appointment of
Treasurer.

no &c. see *ante*, No. CCLXX. That if the sd (*obligor*) do shall weekly during such time as he shall continue or be urer of the sd Compy or oftener if thereunto required well truly account for pay and deliver unto the Committee of d Compy for the time being appted to manage the affairs e Compy or unto such or. psn or psns as the sd Committee appt to rece the same all such sum and sums of money books rs writings rects vouchers matters and things which he the *bligor*) hath recd or shall from time to time be intrusted or which shall come into his hands for on acct of or to the of the sd Compy and their successors And also if the sd *gor*) do and shall from time to time whilst he shall continue urer in all things and in all respects well and faithfully exte perform the sd office of Treasurer Then &c. see *ante*, CCLXX.

Condition.

Bonds by Administrators.

Is. 1. By the 22 & 23 Car. 2, c. 10, the ordinary or ecclesiastical e is required to take a bond, with two or more sureties, from the n to whom the administration of an intestate's goods is com- d, duly to account for such effects as shall come into his hands, rther Dig. p. ii. tit. ADMINISTRATION.

To Account by
Administrator.

Bond required
by statute.

*To Account by
Administrator.*

2. As to sureties, and their remedies against each other, see Pref. sect. 4.

Stamp duty.

3. If the estate to be administered do not exceed 20*l.* in value, an administration bond is exempt from all duty, otherwise it is charged, by the 55 G. 3, c. 184, with a 1*l.* stamp duty; but bonds for administering effects of depositors in savings banks, not exceeding 50*l.*, are exempt.



No.
CCLXXII.

No. CCLXXII.

*To account by
Administrator.*

*Bond by an Administrator and his Sureties to Account for his
Intestate's Effects.*

Obligation.

Know all &c. see *ante*, No. CCLXVII. That I (*administrator*) of &c.

Condition.

Now &c. see *ante*, No. CCLXX. That if the above-bounden (*A.*) do make or cause to be made a true and perfect inventory of all and singr the goods chattels and credits of the sd (*intestate*) which have or shall come into his hands posson or knowledge or into the hands posson or knowledge of any or. psn or psns for him and the same do exhibit or cause to be exhibited into the registry of the court of on or before the day of next ensuing and the same goods chattels and credits and all or. the goods chattels and credits of the sd decd which at any time hrafr shall come to the hands or posson of the sd (*A.*) or of any or. psn or psns for him shall duly administer according to law *And furr* shall and do make or cause &c. a true and just acct of his sd administration at or before the day of and of all the rest and residue of the sd goods chattels and credits which shall be found remaining upon the sd (*A.*'s) acct the same being first examined and allowed by the judge or judges for the time being of the sd court and shall deliver and pay unto such psn or psns resply as the sd judge or judges by his or their decree or sentence pursuant to the true intent and meaning of this Act shall limit and appt *And* if it shall appear that if any last will and testamt was made by the sd decd and the exs therein named do exhibit the same unto the sd court and the sd (*A.*) do render and deliver up the sd letters of administration approbation of such testmt being first had and made in the sd court Then &c. see *ante*, No. CCLXX.

No. CCLXXIII.

*and from a Clerk and his Surety for the faithful Execution of
his Office in a Brewery.*

No.
CCLXXIII.
By Clerk.

Know all &c. see ante, No. CCLXVII.

Obligation.

*Whas &c. in and by certain articles of agt bearing date &c. Recitals.
wite agreement between the above-bounden (clerk) and the sd
bligees) his principals) And whas upon the treaty for the engage-
ment of the sd (obligor) as such clk he the sd (surety) on the behalf
d at the request of the sd (obligor) did consent and agree to
come surety unto the sd (bligees) for the sd clk's true and
thful exon and discharge of his sd office as hnaft is mentd*

*Now &c. see ante, No. CCLXX. That if the sd (obligor) do Condition.
d shall at all times so long as he shall continue clk of the sd
bligees) in all things well and truly abide by perform fulfil and
ep all and singr the covts and agts contd in the afd articles
his pt and behalf and do and shall faithfully and diligently
ve the sd (bligees) and the survors or survor of them for the
ll term of yrs mentd in the sd articles and according to the full
d true intent and meaning of the sd articles Then &c. see
te, No. CCLXX.*

*Bond to secure the Payment of an Annuity to a former
Mistress, see ante, No. LXXXIV.*

ANNUITY BONDS.

*Obs. When a bond is a collateral security, it is charged with a 1l.
amp, but when it is the principal security, it is charged with an ad
lorem stamp on the annuity or sum secured, not amounting to 10l.
r annum, 1l.; amounting to 10l. and under 50l., 2l.; to 50l. and
der 100l., 3l.; to 100l. and under 200l., 4l.; to 200l. and under
0l., 5l.; to 300l. and under 400l., 6l.; to 400l. and under 500l. &c.
e MORTGAGES.*

No.
CCLXXIV.
*Payment of an
Annuity.*

No. CCLXXIV.

Bond for Payment of an Annuity (General Precedent).

Obligation.	<i>Know all &c. see ante, No. CCLXXVII.</i>
Recital of contract.	<i>Whas</i> the above bounden (<i>obligors</i>) hath contracted with the above-named (<i>obligees</i>) to grant to them and survivor of them and the exs ads and ass of such survivor one annnty or clear yrly sum of £ for the lives of H. H. of &c. and W. H. of &c. and the life of the survivor of them at and for the price or sum of £
Warrant of attorney.	<i>And whas</i> upon the treaty for the purchase of the sd annnty or clear &c. of £ it was agreed that the same shd be secured by the jt and sevl warrant of atty of the above bounden (<i>obligors</i>) for confessing judgmt thon upon which judgmt is intended to be entered up as hnaft mentd in that behalf <i>And it was</i>
Repurchase of annuity.	furr agrd that the sd annnty or &c. of £ might be repurchased at the time and upon the terms and condons hnaft mentd in that behalf <i>And also</i> that the costs and chas of preparing and perfecting the sd secties for payment of the sd annnty and entering up the sd judgmt and inrolling a proper memorial
Costs of securities.	thof shd be borne by the sd (<i>obligors</i>) <i>And whas</i> in pt performance of the sd agrt the sd (<i>obligors</i>) have on the day of the date of the above written obligon extd a warrant of atty bearing even date herewith empowering certain atties thin named to confess judgmt thon jtly or sevly against them in her Maj. Ct of Q. B. at West at the suit of the sd (<i>obligees</i>) for the sum of £
Defeasance.	besides costs of suit as of Hilary term last Easter term next or any or. subsequent term with a condon or defeasance thon indorsed that no exon shd issue on the judgmt intended to be entered up in pursuance of the sd warrant of atty until deft shd happen to be made in paymt of the sd annnty on some or one of the days and times and in manner hnaft mentd and appted for the paymt thof when and in such case it shd and might be lful for the sd (<i>obligees</i>) or the survivor of them or the exs ads and ass of such survivor to sue out one or more writ or writs of exon upon or by virtue of the sd judgmt for all arrears of the sd annnty which shd then be due And all costs chas dams and exps which they or any or either of them might have been at or put unto by reason or on acct of the nonpaymt thof witht reviving the sd
Writ of execution to recover arrears.	

judgment or doing any act matter or thing to keep the same on record for the space of one year or more. And that the sd (*obligor*) or either of them their or either of their heirs or assigns should not nor would have receive take or attempt by any means to have receive or take any plea exception or advantage for want of reviving the sd judgment (a) or keeping the same on foot. And that if they or either or any of them should attempt so to do by action motion or other legal proceeding whatsoever these precepts might be pleaded and shown in bar thto any rule or practice of the court or other matter or thing to the contrary notwithstanding. And whereas it hath been agreed betwixt the parties that the sd (*obligees*) or the survivor of them or the heirs or assigns of such survivor shall and will accept and take the sum of £ in full for the repurchase of the sd annuity or yearly sum of £ at the time and upon the terms hereinafter conditioned for the same. And they have also agreed that upon the decease of the survivor of them the sd H. H. and W. H. in case the sd annuity shall not have been repurchased and upon full payment of the sd annuity and of the proportional part (b) thereof up to and inclusive of the day of decease of such survivor and of all costs charges and expenses as aforesaid then the sd (*obligees*) or the survivor &c. or the heirs &c. in either of the sd cases shall and will at the request cost and charges of the sd (*obligors*) or either of them or their or either of their heirs assigns or assigns acknowledge satisfaction on the record of the sd judgment.

Now the Condition &c. see ante, No. CCLXX. That if the above bounden (*obligors*) or the survivor of them their or either of their heirs or assigns shall and do well and truly pay or cause to be paid unto the sd (*obligees*) or the survivor of them or the heirs or assigns of such survivor for and during the joint natural lives of the sd H. H. and W. H. and the life of the survivor of them one annuity or clear yearly sum of £ of lawful money of Great Britain free and clear of and from all taxes charges and incumbrances whatsoever parliamentary or otherwise (c) and to be paid and payed at or in the dining-hall of Lincoln's Inn in the sd County of Middelsex or at such other place or places in or about London or West. as the sd (*obligees*) or the survivor of

No.
CCLXXIV.
Payment of an
Annuity.

Want of re-
viving judg-
ment.

Terms of re-
purchase.

Acknowledg-
ment of satis-
faction.

Condition.

(a) As to reviving &c. judgments, see Dig. p. iii. tit. JUDGMENTS.

(b) As to the apportionment of rents, see ante, APPORTIONMENT.

(c) If it be necessary say "except the income or property tax payed on the same annuity."

No.
CCLXXIV.
Payment of an
Annuity.

them or the exs ads or ass of such survivor shall direct or appt betn the hours of eleven or twelve of the clock in the forenoon of the sevl respive days and times followg that is to say (see *ante*, No. LXXXV.) *And also* such a like proportional pt thof as shall accrue from and after the last of the afd days of paymt next preceding the dece of the survivor of them the sd H. H. and W. H. from and up to the day on which such dece shall happen or if the sd (*obligors*) or either of them their or either of their hrs exs or ads shall at any time after the term of five yrs to be computed from the day of the date of the above written obligon be desirous of repurchasing the sd annty or clear yrly sum of £ and of such his or their intention shall give three cal mths notice in writing unto the sd (*obligees*) or the survivor of them or witht or in lieu of such notice shall pay unto them or him the sum of £ being one half year's portion of the sd annty or &c. of £ and do and shall on the expiration of such notice or on such paymt in lieu thof as the case may be well and truly pay or cause to be pd unto the sd (*obligees*) or the survivor of them or the exs ads or ass of survivor the sum of £ being the original purchase money of the sd annty or clear yrly sum of £ and all and evy sum and sums of money which shall then be due and owing to the sd (*obligees*) or the survivor of them or the exs ads or ass of such survivor for or on acct of the sd annty &c. of £ up to and inclusive of the day of paying the same *And also* for and on acct of all costs chas dams and exps which they or any of them shall or may have been at or put unto for or on acct of the nonpaymt of the sd annty then the above-written obligon shall be void and of no effect orwise be and remain in full force and virtue.

Memorandum—Recd of the within named (*obligees*) the sum of £ in manner following that is to say one Bk of Engld note (a) No. for the sum of £ as in the within-written bond or obligon is agrd to be given by the sd (*obligees*) for the purchase of the within mentd annty or clear yrly sum of £ and which sd sum of £ was pd by the sd (*obligees*) in their own proper psn to the sd (*one obligor*) in his own proper psn
(*obligor*)

Witness E. F.

(a) As to the provision respecting the consideration in the Annuity Act, see Dig. p. ii. tit. ANNUITIES.

No. CCLXXV.

No. CCLXXV.

Bond for securing the Payment of an Annuity to a Man and his Wife for their Lives.

Annuity to a Man and his Wife.

Know all &c. That &c. see *ante*, No. CCLXVII.

Obligation.

Whas the above-named (*obligee*) hath contracted with the above-bounden (*obligor*) for the absolute purchase of one annnty of annual sum of £ to be pd unto the sd (*obligee*) and his as during his life and after his dece to E. his wife and her ass she shd survive him free from taxes and witht any or. deduction whatsr by equal half-yrly paymts on the days hnaft mentd ogr with a proportional pt of the sd annnty or annual sum of for the time which at the dece of him the sd (*obligee*) shall have elapsed of the sd annnty then growing due And the rice and conson for the purchase of the sd annnty or annual sum of £ is £ sterling money of Gt Britn and the sum of £ int or share in capital joint stock of 5 per cent. annnties created by an Act of Parlt passed &c. *And whas* the sd (*obligee*) hath before the exon of the above-written bond paid the sd sum of sterling money to and transferred the sd sum of £ 5 per cent. stocks into the name of the sd (*obligor*) in the bks of the Govr and Compy of the Bk of Engld which paymts the sd (*obligor*) doth hby acknge And whas upon the treaty for the sd purchase it was agrd that the costs and chas of procuring the sd sum of £ upon the sd annnty and of preparing and perfecting the secties for the same shd be borne and pd by the sd (*obligor*).

Recitals.

Contract for purchase of an annuity.

Now the condition &c. see *ante*, No. CCLXX. That if the above-bounden (*obligor*) his exs or ads do and shall well and truly pay unto the sd (*obligee*) or his ass during the term of his natural life one clear annnty or annual sum of £ by half-yrly paymts on or at the days and times following that is to say on the day of and on the day of the first half-yrly paymt to be made on the day of next ensuing the date of the above-written bond And do and shall also if E. now the wife of the sd (*obligee*) be living at his death well and truly pay or cause &c. unto the sd E. D. yrly and evy yr during the then remr of her life a like clear annnty or yrly sum of £

Condition.

No. CCLXXV.
*Annuity to a
 Man and his
 Wife.*

of &c. at or on the afd feasts or days by half-yrly paymts the first paymt of the last mentd annty to be made on the first of the sd feasts or days which shall happen next after the dece of the sd (*obligee*) And do and shall make all the sd paymts as well to the sd (*obligee*) during his life as after his dece to the sd E. D. if she survive him during the then remr of her life witht any deduction or abatement whatsr out of either of the sd annties or yrly sums or any pt thof for or by reason of any Parliamentary taxes or impositions whatsr or for or in respect of any or. matter cause or thing whatsr *And also* do and shall within ten days after the dece of the sd (*obligee*) and E. his wife resply in case he or she shall die in the interval betn any of the half-yrly days of paymt well and truly pay unto the exs ads or ass of the sd (*obligee*) or of the sd E. his wife if she survive him a proportional pt of the sd annty or annual sum of £ for the time which at the dece of the sd (*obligee*) or E. his wife shall have elapsed of the half-yrly paymt then growing due Then &c. see *ante*, No. CCLXX.



No.
 CCLXXVI.

No. CCLXXVI.

Annuity Bond.

Bond for securing an Annuity granted by a former Bond which has been lost.

Obligation.

Know all &c. see ante, No. CCLXVII.

Recital of
 former bond.

Whas the sd (*obligor*) by his bond or writing obligatory under his hand and seal bearing date &c. became bd to the said (*obligee*) in the sum of £ and the sd sum is conditioned to be void in payment by the sd (*obligor*) his hrs exs or ads to the sd (*obligee*) of an annuity of £ for his life by half-yrly payments on &c. in evy yr and the sd bond hath been inrolled pursuant to the statute in that behalf made and provided And all arrears of the sd annty have been pd up and in full to the

Loss of bond.

day of now last past *And whas* the sd bond has been lost and it hath been agrd betn the sd (*obligor*) and the sd (*obligee*) that a fresh bond to replace the one that hath been lost should be executed by the sd (*obligor*) at the expence of the sd (*obligee*)

Now &c. see *ante*, No. CCLXX. if the sd (*obligor*) his hrs &c. and shall from time to time during the life of the sd (*obligee*) well and truly pay or cause to be pd unto the sd (*obligee*) or his s one annnty or &c. of £ on &c. in evy yr by even &c. ymts clear of all deductions on any account whatsr [the same be in lieu and full satisfaction of the sd annnty of £ anted or secured to the sd (*obligee*) by the sd (*obligor*) as befefor mentd or recited and all arrears and half yrly paymts of up to the day of now last past] and the first half ly payment of £ hby granted or secured to become due day of next ensuing the date of the above written bond or obligation provided the sd (*obligee*) shall be living at that time or if the sd hnbefor recited bond or obligation shall at any time hereafter be found or come to the hands of the l (*obligee*) or any or. psn as her agent or any action or suit at w shall be brought sued commenced or prosecuted under or y virtue of that bond or if it shall appear or be proved that any sumt hath been or shall be made by the sd (*obligee*) of the amt of that bond *Then* in any or either of such cases this obligation &c. see *ante*, No. CCLXX.

No.
CCLXXVI.
Annuity.

Condition.

Bond to a Trustee for securing an Annuity to a Married Woman purchased with her separate Property, see post, BONDS (Married Woman).

Arbitration Bond, see ante, No. CXXVII. ARBITRATION.

Assignment of a Bond, see ante, No. CLIII. to CLV.

ASSIGNMENTS.

Auctioneer's Bond, see ante, No. CCVI. AUCTIONS.

BAIL BONDS.

- When required. SECT. 1. The 23 Hen. 6, c. 9, requires, that when the defendant in a civil action is arrested, the sheriff should take bail with a security by bond or obligation, and therefore an agreement in writing, made by a third person with a sheriff's officer, to put in good bail for the defendant, is sufficient under this statute, Tidd's Pract. c. 11: as to giving bail under 1 & 2 Vict. c. 110, see further, Dig. p. ii. tit. BAIL.
- Form of the bond. 2. As to the form of the bond, it is necessary that it should be made to the sheriff himself by name of office, and that it be conditioned for the defendant's appearance at the return of the writ, and for that only, *ib. ub. sup.*
- Stamp. 3. The bail bond is required to be upon a half-crown stamp.

No.
CCLXXVII.
*Common Form
of a Bail Bond.*

No. CCLXXVII.

Common Form of a Bail Bond.

- Obligation. *Know all &c. see ante, No. CCLXVII.*
That we C. D. of &c. (*the defendant in the action*) E. F. of &c. and G. H. of &c. (*the bail*) are held and firmly bound to I. K. esq. sheriff of the county of in the penal sum of £ (*double the sum sworn to and indorsed on the writ*) of 1lul &c. to be pd to the sheriff or his certain atty exs ads or ass for which paymt we &c. see *Forms of the Obligation*, Nos. CCLXVII. to CCLXIX.
- Condition. *The condition* of the above-written obligation is such that if the above-bounden C. D. do appear (a) before our sovereign lady the Queen on to answer A. B. of a plea of trespass (b)

(a) If in the Common Pleas, say, "before her Maj. Justices at Westr on &c." If in the Exchequer, "before the Barons of her Maj. Court of Exchequer at Westr on &c."

(b) Or, according to the *ac etiam* in the process, if by original, say, "do appear &c. on &c. wheresoever &c. to answer A. B. of a plea &c." (*as the plea is.*) If in the Exchequer, on a writ of *quo minus*, say, "to answer to A. B. the Queen's debtor of a plea of trespass whby he is less able &c." Or, if on process of contempt, say, "to answer our sovereign lady the Queen of divers trespasses contempts &c. by him lately done and committed." But see now as to these writs, Dig. p. iii. tit. Process.

en this obligation to be void otherwise to remain in full
nd virtue

No.
CCLXXVII.
*Common Form
of a Bail Bond.*

sealed and delivered by the
e-named C. D. E. F. and
l. (being first duly stamped)
ie presence of

C. D. (L. s.)
E. F. (L. s.)
G. H. (L. s.)

M. N.

O. P.

No. CCLXXVIII.

Special Bail Bond.

No.
CCLXXVIII.

no all &c. see ante, No.

Obligation.

as the above-bounden (*obligor*) was on the day of
by the sheriff by virtue of the Queen's writ of *capias* (as
writ now in *mesne process* under 1 & 2 Vict. c. 110, see
p. ii. tit. BAIL) issued out of her Maj. Ct of Q. B. (or
" or " Excheq of Pleas") bearing date at Westr the
to the sd sheriff directed and delivered agst the sd
and &c. (*as in the writ*) at the suit of A. B. *And whas*
of the sd writ togr with evy memorandum or notice sub-
l thereto and all indorsements thereon was on the execu-
ereof delivered to the sd C. D. *And whas* he is by the
t required to cause special bail to be put in for him in the
to the sd action within eight days after exon thof inclusive
day of exon

Recital of arrest.

v &c. That if the sd C. D. do cause special bail to be put Condition.
him to the sd action in her Maj. sd Ct as required by the
t Then &c. Sealed &c. see *ante*, No. CCLXXVII.

No. CCLXXIX.

Assignment of the Bail Bond (by Indorsement).

No.
CCLXXIX.

. As to the assignments of bonds, see ASSIGNMENTS, Pref.

ie within-named sheriff of have at the request of A. B.
ltff also within-named assigned to him the sd A. B. the
1-written bail bond and all bent and advantage arising

as a confirmation of the conveye and assure and covt to surrender by the sd in pt recited indre expssd to be made by the d (I.) And shd in the mean time secure unto the sd A. B. his ppteas and ass the quiet posson and enjoyment of the same reehd and copyhd heredts as agst the sd (I.) and his hrs and hose claiming under him or them in manner hnafttr mentd

No.
CCLXXXIX.-2.
*Conveyance by
Infant.*

Now &c. see *ante*, No. CCLXX. That if the sd (I.) do and shall when and so soon as he shall have attained the age of 21 yrs at the costs and chas of the sd A. B. by such deeds and conveys as the counsel of the sd A. B. shall approve of convey surrender and assure unto the sd A. B. his hrs appteas and ass or as he or they shall direct or appt all the pt or share in fee simple of the sd (I.) of and in the sd freehd and copyhd heredts mentd and comprised in the sd in pt recited indre of rele bearg even date with the above-written bond or obligation freed and discharged from all incumbs previously made by the sd (I.) *And also* if in the mean time and until such conveyance surrender and assurance the sd A. B. his hrs appteas and ass do and shall from time to time and at all times peaceably and quietly have hold occupy possess and enjoy the sd freehd and copyhd heredts mentd and comprised in the sd in pt recited indre witht any let suit trouble demand eviction or disturbance of from or by the sd (I.) his exs ads or ass or any psn or psns claiming &c. Then &c. see *ante*, No. CCLXX.

Condition.

No. CCLXXX.

Bond to secure a Debt by Cognovit in an Action brought, and by Insurance of the Obligor's Life, in which the Father joins.

No. CCLXXX.
Debt.

Know all Men, &c. see *ante*, No. CCLXVII.

Whas the above bounden I. M. the younger is and standeth justly indebted unto the above-named T. S. in the sum of £ for money lent and advanced *And whas* for recovery of the sd debt T. S. hath commenced an action at law agst the sd I. M. the younger in her Maj. Ct of C. P. at West. and the sd I. M. the younger hath been held to bail thon (*as to holding to bail under 1 & 2 Vict. c. 110, see Dig. p. ii. tit. BAIL*) *And whas* the sd I. M. the younger hath since applied to the sd T. S. and requested him to suspend any furr proceedings in the sd action and hath

Obligation.

Recitals.

Debt and
action.

Agreement to
sign cognovit.

No. CCLXXX. proposed to confess the same by *cognovit* under his hand with
Debt. _____ liberty for the sd T. S. to enter up judgment thon in case deft

shall be made in paymt of the sd debt with int and costs accg
 To insure life of obligor. to the condon hnaft expssd And also that he the sd I. M. the

younger would at his own costs and chas insure the sd sum of
 £ upon his own life at the office at London
 and keep the same so insured until paymt of the sd debt with
 int thon and that in case of his death bef the sd debt and int
 shall be so dischd the sd T. S. shd have full bent and advantage
 of such insurance and that the policy thof shd be taken out in
 the name of and for the sd T. S. and be deposited with him
 And that when the sd debt and int shd be pd and discharged
 then that the sd policy and all bent thof shd be delivered up
 and vested in the sd I. M. the younger upon his paymt of any
 sums of money to the sd I. M. the elder which he shall or may
 have advanced and pd to the sd T. S. in virtue of these prests
 And hath furr proposed that the sd I. M. the elder shd become
 jtly bound with him the sd T. S. in manner hnaft mentd to all
 which the sd T. S. hath agrd and having suspended all pro-
 ceedings in the sd action the sd I. M. the younger hath on the
 day of the date of the above-written obligon signed a *cognovit*
 as hnbefe proposed and hath commenced such insurance and
 hath deposited with the sd T. S. the policy as hnbefe agrd

Condition. Now therefore the condition &c. see ante, No. CCLXX. That
 if the above bounden I. M. the elder and I. M. the younger or
 either of them or either of their hrs exs or ads do and shall well
 and truly pay or cause to be pd unto the sd T. S. his exs ads
 or ass the sum of £ of lful &c. togr with lful int at or after
 the rate of £ pr cent per ann on the dece of either of them
 the sd I. M. the elder or I. M. the younger which shall first
 happen and do and shall in the mean time well and truly pay
 or cause &c. unto the sd T. S. his exs ads and ass lful int for the
 same at or after the rate afd by half-yrly paymts on the
 day of and day of in each yr commencing from
 the day of the date of the sd obligon and do and shall at the
 proper costs and chas of him the sd I. M. the younger well and
 truly pay or &c. at the sd insurance office the annual premium
 for the insurance so commenced as afd from time to time and
 evy yr until the sd debt and int as afd shall be wholly dischrgd
 And also in case of the dece of the sd I. M. the younger if he

the sd T. S. his exs ads or ass shall be permitted and suffered No. CCLXXX.
 witht any hindrance delay or interruption of from or by any Debt.
 psn or psns whomsr to rece and take to his own use and bent
 all and evy sum or sums of money bent emolument and advan-
 tage which shall or may then accrue or have become paye and
 recoverable upon or by virtue of the sd policy of insurance of
 or from the sd assurance compy or any psn or psns
 whomsr it shall or may concern to pay the same in full liquida-
 tion discharge and satisfaction of the sd debt and int at that
 time due to the sd T. S. his exs ads or ass Then &c. see *ante*,
 No. CCLXX.

—◆—
Bond for the Payment of Money, see post, BONDS (PAYMENT).

—◆—
 No. CCLXXXI.

Bond of Indemnity (Common Form).

No.
 CCLXXXI.
Indemnity.

Know all Men &c. see ante, No. CCLXVII.

Whas in and by a certain bond or obligon bearing even date *Recitals.*
 herewith the above-mentd (*obligor*) became held and firmly bd
 unto A. M. in the sum of £ with a condon thereunder written
after reciting that *whas* the sd A. M. had lent and advanced to
 the above-bounden (*obligor*) the sum of £ upon the secty of
 certain manors &c. situate &c. granted and reld to the sd A. M.
 by way of mtge in fee by indres of lease and rele the indre of
 lease bearing date the day befe and the indre of rele bearing
 even date with the now reciting bond or obligon and made or
 mentd to be made betn the above-bounden (*obligor*) of the one
 pt and the sd A. M. of the or. pt subject nevss to a provo &c.
And after further reciting that at the time of the treaty for the
 loan of the sd money it was agrd that the int thof so long as
 the same shd remain a charge upon the afd preses or any pt
 thof shd be paye &c. and that some responsible psn or banker's
 house shd engage for the due paymt of such int and should give
 such bond or secty for that purpe as thrundr expssd *And after*
furrr reciting that the above-named (*obligor*) had applied to and
 requested the above-named (*obligees*) to become such secty for

No.
CCLXXXI.
Indemnity.

the true and punctual paymt of the sd int by half-yrly paymts to which they had consented and agrd upon the condon that if the sd (*obligees*) or any or either of them their or any or either of their hrs exs or ads did and shd well and truly pay or cause to be pd unto the sd A. M. his exs ads or ass at or in &c. by even and equal &c. in evy yr for and during all such time as the sd sum of £ or any pt thof shd remain and be a charge upon the afd preses or any pt thof by virtue of the thinbefe recited mtge int after the rate &c. upon the sd sum of £ or so much thof as shd from time to time remain a charge upon &c. witht any deduction or abatement whatsr for or on acct of remittance of money from Ire. to Engl. or on any or. acct whatsr then the sd obligon should be void &c. as by the sd recited bond on reference thto will more fully appear.

Now the condon of the above-mentd bond or obligon is such that if the above-mentd (*obligor*) his hrs exs or ads do and shall during such time as the sd sum of £ or any pt thof shall remain due and owing on the secty afd from time to time regularly and punctually pay or cause to be pd unto the sd A. M. his exs ads or ass the int of the sd principal sum of £ or so much thof as shd remain due at the times and place and in manner as in the sd indre of rele mentd and apptd for paymt of the same *And* also do and shall save protect and keep harmless and indemnified the sd (*obligees*) of from and agst the sd recited bond or obligon and also of from and agst all costs charges dams and exps whatsr which they the sd (*obligees*) and each and evy of them their each and evy of their hrs exs and ads shall or may at any time or times hrafr pay bear sustain expend or be put unto for or on acct of the non-paymt thof or for or by reason or means of the sd recited bond or of the sd (*obligees*) having entered into the same *Then &c.* see *ante*, No. CCLXX.

No.
CCLXXXII.
Indemnity,
(Attorney's
Clerk.)

No. CCLXXXII.

Bond for the faithful Service of an Attorney's Clerk or Assistant.

Obligation.
Recitals.

Know all &c. That &c. see *ante*, No. CCLXVII.

Whas the above bounden (*obligor*) hath applied to and is desirous of entering into the service and employ of the sd (*obligee*)

No.
CCLXXXII.
Indemnity,
(Attorney's
Clerk.)

his clk and assistant in the management of the business or
fession of the sd (*obligee*) of an atty solicitor and conveyancer
and the sd (*obligee*) hath consented and agrd to accept the ser-
vice of the sd (*obligor*) as his clk as afd for and during such
period as the sd pties shall mutually agree he the sd (*obligee*)
paying unto the sd (*obligor*) at or after the rate of £ per ann
and *whas* the sd (*obligee*) being desirous of taking a good and
sufficient secty for the honesty and integrity of the sd (*obligor*)
the sd (*surety*) hath consented to join with the sd (*obligee*) in
the above-written obligation as a secty and protection to the sd
(*ligee*) his exs &c. of from and agst all loss or damage that
might be sustained by the sd (*obligee*) by reason of the sd (*obligor*)
not duly accounting with the sd (*obligee*) for all mos which may
come to his hand or on account of the embezzlement misapprop-
riation conversion or wilful defacement by the sd (*obligor*) of
his deeds writings evidences or effects whatsr which shall come
into the hands or posson of the sd (*obligor*)

Now the condition &c. see ante, No. CCLXX. That if the Condition.
above-bounden (*obligor*) and (*surety*) their respive hrs exs or ads
some or one of them do and shall from time to time and at all
times hrafr well and truly acct to and with the sd (*obligee*) his
exs and ads of and for all mos property and things which shall
may come into the posson custody or power of him the sd
(*ligor*) as the clk and assistant of the sd (*obligee*) And do and
shall at all times when required pay over to the sd (*obligee*) his
exs ads or ass all and evy sum and sums of money which shall
any acct be or appear to be coming due to him from the sd
(*ligor*) And do and shall save protect keep harmless and
indemnified the sd (*obligee*) his exs ads and ass of from and agst
embezzlement misappropriation misapplication and conver-
sion to the use of the sd (*obligor*) of any mos goods chattels and
effects belonging to the sd (*obligee*) his exs ads or ass or to any
tor or client And also of and from and agst all defacements
and cancelling witht the knowledge or consent of the sd (*obligee*)
of any psn duly authorized by him or orwise wilfully muti-
gating any deeds writings evidences instruments bks or papers
of any description whatsr which shall belong to the sd (*obligee*)
his exs or ads or any suitor or client who shall have deposited
the same with the sd (*obligee*) or the sd (*obligor*) as his clk And

No.
CCLXXXII.
Indemnity,
(Attorney's
Clerk.)

if the sd (*obligor*) shall and do well and faithfully in all things serve the sd (*obligee*) as his assistant in the practice or profession of an atty solicitor or conveyancer as afd Then &c. see *ante*, No. CCLXX.

No.
CCLXXXIII.
Indemnity,
(Merchant's
Clerk.)
Condition.

No. CCLXXXIII.

Another Form for a Merchant.

Now the condition of such obligation is such That if the above bounden (*clerk*) do and shall at all times hraft so long as he the sd (*C.*) shall continue in the service of and be employed by the above-named (*principal*) as his clerk or servant well faithfully and truly serve the sd (*P.*) his master witht consuming wasting embezzling losing mis-spending misapplying or unlawfully making away with any of the mos goods chattels wares merchandizes or effects whatsr of the sd (*P.*) his master or of any or. psn or psns whomsr for which he the sd (*P.*) his hrs exs or ads shall or may by any law custom or usage whatsr be anywise answerable or responsible which shall be committed to his the sd (*C.*'s) charge care custody or keeping by reason or means of his sd service or being clerk as afd And if the sd (*C.*) shall at any time during the time of his being clerk or servant as afd to the sd (*P.*) his exs or ads neglect or refuse to account with him the sd (*P.*) his exs ads or ass weekly or oftener if thereunto required by the sd (*P.*) his exs ads or ass by reasone notice in writing under his or their hands for that purpe to be given or left with him the sd (*C.*) at his house or usual place of abode Then if the sd (*C.*) his hrs exs or ads do and shall within mths next after due proof thof either by confession or orwise make good and sufficient recompense satisfaction and paymt unto the sd (*P.*) his exs ads or ass for the sd mos goods chattels wares merchandize or effects of him the sd (*P.*) so lost wasted mis-spent or misapplied as afd And also for all such loss damage or charge as he the sd (*P.*) his exs or ads shall suffer sustain or be put unto for or by reason or means of his the sd (*C.*'s) neglecting or refusing to acct as afd Then &c. see *ante*, No. CCLXX.

No. CCLXXXIV.

*d for Performance of the Covenants in a Deed of Copart-
nership by one who is admitted as a New Partner.*

No.
CCLXXXIV.
Indemnity,
(Partnership
Accounts.)

now all &c. see *ante*, No. CCLXVII.

has by indre of three parts &c. and made betn A. G. son Recitals of
copartnership
deed.
ie above mentd H. G. of &c. of the first pt the sd J. P. of
econd pt and the sd F. E. of the third pt the sd A. G. J. P.
F. E. did thby agree to be ptnrs in the trade or business of
rwer and in the buying of barley and all or. things belong-
o the sd business from the day of for the term

 yrs from thence next ensuing determinable as thin is
td the sd business to be conducted at &c. under the names
firm of A. G. & Co. or of &c. as thin is mentd *And* that
the sd J. P. and F. E. their exs or ads shall from time to
as the same shd be necssy for that purpe pay and advance
qual proportions so much money as would be sufficient to
r on the sd business with proper vigour and effect not
eding the sum of £ unless two of the sd pties shd be
ous to increase the same and in that case not to exceed

 unless with consent of all the sd pties and that the sd
hip shd be managd and carried on under the terms provi-
s covts and agrts thin decld and contd *And whas* the sd Agreement by
father to give
a bond.
i. out of love and affection for his son the sd A. G. previous
ie execn of the above-mentd indre agrd with the sd J. P.
F. E. to enter into and exete the present bond

ow &c. see *ante*, No. CCLXX. That if the sd A. G. do and Condition
well and faithfully perform fulfil and keep all and every
terms provisions covts and agrts in the sd indre contd and
to be by him performed and done and if the sd H. G. his
exs or ads do and shall from time to time and at all times
r save defend keep harmless and indemnified the sd J. P.
F. E. and their respive hrs exs and ads of from and agst all
s costs chas and exps which they or any of them shall or
sustain or be put unto for or by reason or means or on
of the non-performance of all or any of the terms provisions
s and agrts in the sd indre contd and agrd to be by him the
.. G. performed and done so and in such manner that the sd
i. shall or may be answe to the sd J. P. and F. E. and their
ive exs and ads for such losses costs chas and exps in such

No.
CCLXXXIV.
*Indemnity,
(Partnership
Accounts.)*

and the same degree as if he the sd H. G. had been a pty to the sd indre and had been thby constituted a ptner in the sd jt business in the place and stead of the sd A. G. and had entered into the covts and agrts thin contd on the pt of the sd A. G. and no furr Then &c. see *ante*, No. CCLXX.

No.
CCLXXXV.

No. CCLXXXV.

*Another Bond of Indemnity against old Partnership
Accounts &c.*

Obligation.

Know all &c. see *ante*, No. CCLXVII.

Recitals of
copartnership
articles.

Whas by articles of agreement of five pts bearing even date with the above-written obligation the above A. B. and the sd C. D. E. F. G. H. and H. I. have agreed to become ptners in the business of banking upon the terms therein mentd *And whas* on the treaty respecting the sd partnership the sd A. B. hath proposed and agrd at the time of the exon of the sd articles to give unto the sd or. pties the bond of himself and two or. psns for the purpe hnafttr mentd *And whas* the sd A. B. hath proposed I. C. and H. B. as the two psns to be joined with the sd A. B. who have been approved by the sd or. pties.

Agreement to
enter into bond.

Sureties pro-
posed and ap-
proved.

Condition.

Now &c. see *ante*, No. CCLXX. That if the sd A. B. I. C. and H. B. or some or one of them their or some or one of their hrs exs or ads do and shall from time to time and at all times hrafttr well and sufficiently protect save harmless and keep indemnified the sd C. D. &c. and each and evy of them and each and evy of their exs ads and ass and each and evy of their lds tents goods and chattels and also the este and effects of the sd coptshp from and agst all such actions costs losses chas dams and exps which may at any time or times hrafttr be instituted or commenced prosecuted or made agst them the sd C. D. &c. or agst the lands &c. of them the sd C. D. &c. or any of them or agst the este and effects of the sd coptshp or which they the sd C. D. &c. or any of them may hrafttr bear pay or be put unto or become subject or liable to by reason of any of the debts contracts or engagements of him the sd A. B. in respect of his late pttnshp with *And also* do and shall answer and make good unto the sd C. D. &c. their exs ads and ass and to the este of the sd ptshp the share and proportion of him the sd A. B. under the befe recited articles of all such losses costs dams

and exps which the sd coptshp este may from time to time during the continuance of the same suffer or sustain by any debt or debts which may be incurred by such copshp or by any or. means or in any or. manner howsr *And also* if the sd A. B. his exs or ads do and shall in all things well and truly perform fulfil and keep all and evy the covts clauses articles and agrts entered into by the sd A. B. on his pt to be fulfilled performed and kept accg to the true intent and meang thof *And* do and shall from time to time and at all times hrafr well and sufficiently protect &c. the sd C. D. &c. or any of them their or any of their lds &c. and also the effects and property of the sd coptshp from and agst all such chas losses dams exps and demands which they may at any time hrafr bear &c. by reason of the breach of the sd articles afd *Then* &c. see *ante*, No. CCLXX.

No.
CCXXXV.
*Indemnity,
(Partnership
Accounts.)*

No. CCLXXXVI.

Bond that an Outstanding Term shall, within a given Time, be assigned to a Trustee by the Representative of a Deceased Trustee, and for the Indemnity of the Purchaser in the mean Time.

No.
CCLXXXVI.
*Indemnity,
(Purchaser.)*

Know all &c. see *ante*, No. CCLXXXVI.

Obligation.

Whas by indres (*recite purchase deed*) *And whas* by indre &c. (*recite creation of term*)

Recital of purchase deed &c.

And whas it hath been agrd that the sd term of yrs shall be assd to a trustee of the nomination of the sd (*purchaser*) his hrs or ass *Upon Trust* for the sd (*purchaser*) his hrs and ass and to the intent and purpe only to attend and wait on the revn and inhance of the sd preses and to protect the same from all mesne incumbs *And whas* the sd (*purchaser*) hath consented and agrd to pay to the sd (*vendor*) and G. his son the sum of £ as and for the sd purchase money of the messe &c. without requiring an immediate asst of the sd term of yrs *Upon* an agrt by the sd (*vendor*) and G. his son that the sd term shall be assd within cal mths from the day of the date of this bond and that the sd (*vendor*) and G. his son shall enter into this bond subject to the condon hnafr contd

Agreement to assign,

within
months,

and enter into
bond.

Now &c. see *ante*, No. CCLXX. if the above bounden (*vendor*) and G. his son or one of them or one of their heirs exs or ads

Condition.



No.
CCLXXXVI.
Indemnity,
(Purchaser.)

do and shall if necssy within cal mths from the day of the date of this bond or obligon and witht any expence to the sd (*purchaser*) his hrs exs or ads cause or procure letters of administration to be obtained of the goods chattels and credits of (*trustee*) the trustee decd so far at least as the same are left unadministered and relate to or concern the sd term of yrs And if the psn or psns who now are or shall be or become the psr reptive of the sd (*trustee*) the trustee decd so far as relates to the sd term do and shall within cal mths from the day of the date of the sd bond or obligon or as soon aftwds as the sd (*purchaser*) his hrs or ass shall make a request in this behalf to the sd (*vendor*) his exs or ads by a good or effectual indre of asst to be prepared under the diron and at the costs and chas of the sd (*purchaser*) his hrs or ass and to be delivered to the sd (*vendor*) his exs or ads to be exted well and sufficiently assign the sd messe &c. to a psn or pns of the nomination of the sd (*purchaser*) his hrs or ass for all the residue of the sd term of yrs *Upon Trust* for the sd (*purchaser*) his hrs and ass and to attend &c. accg to the uses and trusts decld or to be decld thof in favour of the sd (*purchaser*) his hrs and ass as afd And if the sd (*vendor*) the father his exs or ads do and shall deliver the same indre to the sd (*purchaser*) his hrs or ass as soon as conveniently may be after the same indre shall be exted And if the sd (*vendor*) or G. his son or one of them or one of their hrs exs or ads do and shall at his or their own costs and chas and from time to time and at all times hrafr well and sufficiently save defend keep harmless and indemnified the sd (*purchaser*) his hrs or ass and his or their lds tenmts goods chattels and effects of from and agst all and all manner of ejectments evictions suits at law and in equity paymts costs losses chas dams and exps whatsr which from time to time shall be brrt commenced and prosecuted incurred paid sustained and laid out by the sd (*purchaser*) his hrs or ass for or by reason or on account of the omission on the part of the sd (*purchaser*) now at the time of the exon of these preses to take an assnmt of the sd messe &c. comprised in the sd term of yrs and the residue of the sd term thin in the name or names of a trustee or trustees for the sd (*purchaser*) his hrs and ass *Then &c.* see *ante*, No. CCLXX.

No. CCLXXXVII.

No.
CCLXXXVII.
Indemnity,
(Purchaser).

Bond to Indemnify a Purchaser against an Outstanding Term.

Obs. As to the provision in 11 G. 4 & 1 W 4, c. 60, s. 8, where the personal representative of a trustee is absent, see *Abstract of 11 G. 4 & 1 W. 4, c. 60, s. 8, and notes thereon, Appendix, No. iv.*

Know all &c. see *ante*, No. CCLXVII.

Obligation.

Whas by an indre bearing date the day of and made betn J. N. and A. his wife therein resply described of the one pt and J. B. therein also described of the or. pt For the consons therein mentd the sd J. N. and A. his wife did demise grant bargain and sell unto the sd J. B. his exs ads and ass *all those* pieces and pcls of land hereds and preses To Hold the same unto the sd J. B. his exs &c. during the term of 500 yrs by way of mortgage for securing unto the sd J. B. his exs &c. paymt of the sum of £ and int in manner therein mentd *And whas (recite deeds affecting the fee previous to the assnmt)*

Recital of
mortgage term.

And whas (recite assignment of term to a trustee to attend the inheritance) And whas by indres of lease and rele (*as to the case and release*, see *post*, RECITALS) bearing date the lease the day next before and the rele even date with these prests and made betn the sd (V.) of the one pt and the sd (P.) of the or. pt In conson of the sum of £ to the sd (V.) in land pd by the sd (P.) and also in conson of the further sum of £ the remaining pt of the sd purchase-money to be pd to the sd (V.) his exs ads and ass with int at the time thereafter nentd among or. hereds the sd pces and pcls of land and hereds comprised in the sd in pt recited indre of mtge have been conveyed limited and assured unto the sd (P.) his hrs and ass for ever *And whas* upon the treaty for the sd purchase the sd (P.) required of the sd (V.) to procure an assignment of the pcs and pcls of ld comprised in the sd in pt recited indre of mtge and the residue of the sd term of 500 yrs thby created unto a trustee to be nominated by the sd (P.) and to attend the inheritance But the sd (V.) having represented that the psl reptive of the sd trustee to whom the sd term was assd by the sd in pt recited indre cannot at present be ascertained the sd (P.) hath at the request of the sd (V.) dispensed with the immediate assnmt

Assignment to
trustee.
Conveyance to
purchaser.

Agreement to
enter into a
bond of indem-
nity.



No.
CCLXXXVII.
Indemnity,
(Purchaser).

of the sd term upon the sd (V.) entering into a bond with a sufficient penalty for insuring the assnmt of the sd term as afd and for indemnifying the sd (P.) in manner hnafr mentd And in pursuance of the sd stipulation the sd (V.) hath exted the above written obligon subject to the condon for making void the same as is hnafr contd

Condition.

Now &c. That if the above-bounden (V.) his exs or ads or any of them shall and do at any time hrafr on discovering the psl reptive of the sd (*trustee*) at the request costs and chas of the sd (P.) his hrs or ass assign or procure the sd pces or pcls of land and heredts comprised in the sd in pt recited indre of &c. to be assigned to A. B. or such or. psn or psns as shall be nominated for that purpe by the sd (P.) his &c. for the residue of the sd term in trust &c. And also if the sd (V.) his exs or ads do and shall from time to time and at all times hrafr well and effectually save defend and keep harmless and indemnified the sd (P.) his hrs exs ads and ass of from and agst all losses costs chas dams and exps which he they or any of them shall or may bear pay or be put unto by reason of the sd pces or pcls of land not having been assd in trust as afd previously to the date of these prests or for or on acct of the sd (P.) his hrs and ass not having the bent of the sd term or the residue thof Then &c. see *ante*, No.

No.
CCLXXXVIII
Indemnity,
(Purchaser).

No. CCLXXXVIII.

Bond of Indemnity to a Purchaser from Trustees under a Trust to Sell, where a Fiat of Bankruptcy had been issued against the Cestuique Trust, but not acted upon.

Obligation.

Know all &c. That &c. see *ante*, No. CCLXVII.

Recitals.

Whas by indre of lease and rele bearing date resply the

Conveyance to trustees.

days of the messe or tents lds heredts and preses hnafr described were conveyed to (*trustees*) of &c. in trust to sell and to apply the mos arising from the sale upon the trusts and to and for the intents and purps therein mentd *And whas* the sd above-named (P.) hath contracted with the sd (*trustees*) for the purchase of the sd messes &c. (*parcels*) and the fee simple and inhance thof at the price or sum of £ but an objection hath been taken to the title of the sd heredts on acct of a fiat of

Contract for purchase.

krruptcy having been issued agst the sd (*cestuique trust*) (but sh was never acted upon) and there being no satisfactory ence of the whole of the demands of all the creditors of the *cestuique trust*) being satisfied under the sd trust deed And s the sd (*trustees*) being well satisfied that all the creditors of sd (*cestuique trust*) will accept paymt of their sevl demands n the sd indre is expssd have agrd to indemnify the sd (P.) the lds purchased by him in manner hnafr mentd

Vow &c. see *ante*, No. CCLXX. That if the sd (*trustees*) either of them their or either of their hrs exs ads or ass do shall at all times hrafr well and truly indemnify and save nless the sd (P.) his hrs appointees exs ads and ass and the &c. so agrd to be purchased as afd And all or. the lds &c. of sd (P.) his hrs exs ads or ass of from or agst all costs chas es dams and demands that shall or may happen or be occa- ed or incurred by the sd (P.) his appointees exs ads or ass acct or by reason of the sd *fiat* having been issued agst the (*cestuique trust*) or on acct or by reason of any *fiat* which y hrafr be issued agst him or on acct or by reason of any im or demand of or by any creditor or creditors of the sd *stuique trust*) at the time of making and exting the sd hnbefe ited indre or of any acct matter or thing in anywise relating reto Then &c. see *ante*, No. CCLXX.

No.
CCLXXXVIII
*Indemnity,
(Purchaser).*

Trustees agree
to indemnify
purchaser.

Condition.

No. CCLXXXIX.

Bond of Indemnity against the Rents and Covenants in a Lease.

No.
CCLXXXIX.
*Indemnity,
(Rents and Co-
venants).*

Obs. A lessee, notwithstanding his assignment, continues liable for payment of rent and performance of covenants, but the liability an assignee is determined by his quitting possession, *Taylor v. um*, 1 B. & P. 21; unless where he is bound by his covenant or id.

Know all &c. That &c. see *ante*, No. CCLXVII.

Obligation.

Whas &c. (recite lease) And *whas* by a certain indre bearing n date with the above-written obligation and made betn the ove-named (*assignor*) of the one pt and the above-bounden

Recitals.



indre of assignment bearing date the No. CCXC.
made betn &c. was either lost or mis- *Indemnity,*
request of the sd (*obligor*) hath (Non-produ-
upon the sd (*obligor*) entering tion of Deeds).

* if the above-bounden Condition.

at all times hraft

(*obligee*) his hrs exs

chas dams

shall or

assnmt

prived of the

atr the sd deed of

to the sd (*obligee*) his

ed Then &c. see *ante*, No.

but
CCLXXVII
Indemnity,
(Non-produ-
tion of Deeds)
No. CCXC.

No. CCXCI.

No. CCXCI.

Indemnity,
(*Loss of Title*
Deeds.)

from a Vendor to a Purchaser where
title Deeds were lost.

te, No. CCLXVII.

Obligation.

ase and rele the lease (see *post*, RECITALS) Recital of pur-
ext before the day of the date of the rele chase.

with the above obligon For the consons
nesses or tents &c. situate at in the
unto the sd (*P.*) his hrs and ass but the
s of title to the sd preses being lost or
agrd to save harmless and keep indem-
s and ass agst all pns claiming any right
or any pt thof in manner hnaft expsd
he sd title deeds and evidences of title to
ay time hraft be found the same shall be
) his hrs or ass whole and uncanceled.

o. CCLXX. That if the sd (*V.*) his hrs Condition.
shall from time to time and at all times
d keep indemnified the sd (*P.*) his hrs exs
id agst all mortgages and or. chas and

No.
CCXXXIX.
Indemnity.
(Rents and Co-
venants).

Assignment.

(*assignee*) of the or. pt the sd (*assignor*) For the consons therein mentd did assign and make over the sd messe and preses comprised in the sd in pt recited indre Subject to the payment of the rent reserved by the sd lease and to the observance and performance of the covts agrts stipulations and clauses therein contd which on the tenant or lessee's pt are or ought to be pd done kept and performed *And whas* upon the treaty for the sale it was agrd that the above-written obligation shd be entered into for the security of the sd (*assignor*) with the condon hereunder written for making void the same.

Condition.

Now &c. see ante, No. CCLXX. That if the above-bounded (*assignee*) his exs or ads do and shall from time to time and at all times well and truly pay or cause to be pd the rent or rent by the sd in pt recited indre of lease reserved or made paye from and after the day of last past And do and shall observe perform and keep all and evy the covts which on the pt or behalf of the (*lessee*) therein named his exs ads or ass are or ought to be observed &c. And also do and shall save harmless and keep indemnified the sd (*assignor*) of from and agst all and evy sum and sums of money costs chas and exps which he or they or any of them shall pay sustain or be put unto for or by reason of the nonpaymt of the sd rent or rents or any pt of the same or of the breach or non-observance of the sd covts agrts stipulations and clauses in the sd lease contd or any of them Then &c. see *ante, No. CCLXX.*

No. CCXC.
Indemnity.
(Non-production
of Deeds.)

No. CCXC.

Bond of Indemnity against all Damages which may be sustained on account of the Non-production of a certain Deed.

Obligation.

Know all &c. That &c. see ante, No. CCLXVII.

Recital of lease.

Whas by indre of lease &c. (*recite lease, see Assignment of Lease*) *And whas* by divers mesne assignments &c. parlarly by

Mesne assignment.

an indre of lease &c. (*recite assnmt to the obligor*) *And whas* (*recite sale by auction and that the sd obligee was the purchaser*)

Lost deed.

And whas by indre of &c. (*recite assignment to obligee*) *And whas* previously to the exon of the sd indre of assignment it was

discovered that the sd indre of assignment bearing date the day of and made betn &c. was either lost or mislaid and the sd (*obligee*) at the request of the sd (*obligor*) hath agrd to pay the purchase-money upon the sd (*obligor*) entering into the above-written bond.

No. CCXC.
Indemnity,
(Non-production of Deeds).

Now &c. see *ante*, No. CCLXX. That if the above-bounden (*obligor*) do and shall from time to time and at all times hrafr save harmless and keep indemnified the sd (*obligee*) his hrs exs and ads his and their lds &c. of and from all costs chas dams and exps which the sd (*obligee*) his hrs exs ads or ass shall or may bear be at or put unto on acct of the sd indre of assnmt being lost or on acct of the sd (*obligee*) being deprived of the custody of the same And if at any time hrafr the sd deed of assnmt shall be found and be delivered to the sd (*obligee*) his exs ads or ass whole and uncanceled Then &c. see *ante*, No. CCLXX.

Condition.

—◆—
No. CCXCI.

Bond of Indemnity from a Vendor to a Purchaser where Title Deeds were lost.

No. CCXCI.
Indemnity,
(Loss of Title Deeds.)

Know all &c. see *ante*, No. CCLXVII.

Obligation.

Whas by indres of lease and rele the lease (see *post*, RECITALS) bearing date the day next before the day of the date of the rele and the rele even date with the above obligon For the consons therein mentd certain messes or tents &c. situate at in the were conveyed unto the sd (*P.*) his hrs and ass but the title deeds or evidences of title to the sd preses being lost or mislaid the sd (*V.*) hath agrd to save harmless and keep indemnified the sd (*P.*) his hrs and ass agst all psns claiming any right or title to the sd preses or any pt thof in manner hnafr expssd And also that in case the sd title deeds and evidences of title to the sd preses shall at any time hrafr be found the same shall be delivered to the sd (*P.*) his hrs or ass whole and uncanceled.

Recital of purchase.

Now &c. see *ante*, No. CCLXX. That if the sd (*V.*) his hrs exs ads or ass do and shall from time to time and at all times hrafr save harmless and keep indemnified the sd (*P.*) his hrs exs ads and ass of from and agst all mortgages and or. chas and

Condition.

No.
CCXXXIX.
Indemnity,
(Rents and Co-
venants).

Assignment.

(*assignee*) of the or. pt the sd (*assignor*) For the consons therein mentd did assign and make over the sd messe and preses comprised in the sd in pt recited indre Subject to the payment of the rent reserved by the sd lease and to the observance and performance of the covts agrts stipulations and clauses therein contd which on the tenant or lessee's pt are or ought to be pd done kept and performed *And whas* upon the treaty for the sd sale it was agrd that the above-written obligation shd be entered into for the security of the sd (*assignor*) with the condon hereunder written for making void the same.

Condition.

Now &c. see *ante*, No. CCLXX. That if the above-bounden (*assignee*) his exs or ads do and shall from time to time and at all times well and truly pay or cause to be pd the rent or rents by the sd in pt recited indre of lease reserved or made paye from and after the day of last past And do and shall observe perform and keep all and evy the covts which on the pt or behalf of the (*lessee*) therein named his exs ads or ass are or ought to be observed &c. And also do and shall save harmless and keep indemnified the sd (*assignor*) of from and agst all and evy sum and sums of money costs chas and exps which he or they or any of them shall pay sustain or be put unto for or by reason of the nonpaymt of the sd rent or rents or any pt of the same or of the breach or non-observance of the sd covts agrts stipulations and clauses in the sd lease contd or any of them Then &c. see *ante*, No. CCLXX.

No. CCXC.
Indemnity,
(Non-production
of Deeds.)

No. CCXC.

Bond of Indemnity against all Damages which may be sustained on account of the Non-production of a certain Deed.

Obligation.

Know all &c. That &c. see *ante*, No. CCLXVII.

Recital of lease.

Whas by indre of lease &c. (*recite lease*, see *Assignment of Lease*) *And whas* by divers mesne assignments &c. parlarly by

Mesne assignment.

an indre of lease &c. (*recite assnmt to the obligor*) *And whas* (*recite sale by auction and that the sd obligee was the purchaser*)

Lost deed.

And whas by indre of &c. (*recite assignment to obligee*) *And whas* previously to the exon of the sd indre of assignment it was

discovered that the sd indre of assignment bearing date the day of and made betn &c. was either lost or misaid and the sd (*obligee*) at the request of the sd (*obligor*) hath agrd to pay the purchase-money upon the sd (*obligor*) entering into the above-written bond.

No. CCXC.
Indemnity,
(Non-production
of Deeds).

Now &c. see *ante*, No. CCLXX. That if the above-bounden (*obligor*) do and shall from time to time and at all times hrafter save harmless and keep indemnified the sd (*obligee*) his hrs exs and ads his and their lds &c. of and from all costs chas dams and exps which the sd (*obligee*) his hrs exs ads or ass shall or may bear be at or put unto on acct of the sd indre of assnmt being lost or on acct of the sd (*obligee*) being deprived of the custody of the same And if at any time hrafter the sd deed of assnmt shall be found and be delivered to the sd (*obligee*) his exs ads or ass whole and uncanceled Then &c. see *ante*, No. CCLXX.

Condition.

No. CCXCI.

Bond of Indemnity from a Vendor to a Purchaser where Title Deeds were lost.

No. CCXCI.
Indemnity,
(Loss of Title
Deeds.)

Know all &c. see *ante*, No. CCLXVII.

Obligation.

Whas by indres of lease and rele the lease (see *post*, RECITALS) bearing date the day next before the day of the date of the rele and the rele even date with the above obligon For the consons therein mentd certain messes or tents &c. situate at in the were conveyed unto the sd (*P.*) his hrs and ass but the title deeds or evidences of title to the sd preses being lost or mislaid the sd (*V.*) hath agrd to save harmless and keep indemnified the sd (*P.*) his hrs and ass agst all psns claiming any right or title to the sd preses or any pt thof in manner hnafter expssd And also that in case the sd title deeds and evidences of title to the sd preses shall at any time hrafter be found the same shall be delivered to the sd (*P.*) his hrs or ass whole and uncanceled.

Recital of purchase.

Now &c. see *ante*, No. CCLXX. That if the sd (*V.*) his hrs exs ads or ass do and shall from time to time and at all times hrafter save harmless and keep indemnified the sd (*P.*) his hrs exs ads and ass of from and agst all mortgages and or. chas and

Condition.

No. CCXCI.
*Indemnity,
 (Loss of Title
 Deeds.)*

incumbts anyway affecting the sd messes &c. and preses and agst all and evy psn and psns whomsr claiming any este right or title of in or to the same or any pt thof And if the sd title deeds and evidences forming a complete and perfect title to the sd preses shall at any time be delivered up to the sd (P.) his hrs or ass whole and uncanceled witht fraud or delay Then &c. see *ante*, No. CCLXX.



No. CCXCII.
*Indemnity,
 (Loss of Mortgage
 Deeds).*

No. CCXCII.

*Bond of Indemnity on the Mortgage being paid off on Account of
 the Loss of the Mortgage Deeds.*

Obligation.
 Recitals.

Know all &c. That &c. see ante, No. CCLXVII.

Whas (recite original mtge deducing title to the testatrix And that testatrix upptd above-bounden (obligor) her son and hr at law to be her sole executor) And whas (recite the will of the mortgagor whby he devised all his real estes to the above-named (obligees) in trust to sell the same and discharge the mortgage) And whas (recite re-conveyance from the sd (obligor) to the sd (obligee) as trustee of even date with the above obligation) And whas the sevl deeds or writings hnbefe recited [except the lease for a year upon which the sd recited indre of mortgage was grounded] have been accidentally lost or mislaid And it was therefore agrd that the sd (obligor) shd enter into the above-written bond &c.

Now &c. see ante, No. CCLXX. If the sd (obligor) his hrs &c. do and shall from &c. hraftir save &c. (see last *Precedent*) the sd (obligees) their hrs exs ads *cestuique trust* and ass of from and agst (a) all manner of actions suits and proceedings whatsr at law or in equity which shall or may be brought &c. agst the sd (obligees) their &c. And if the sd mortgage deeds shall at any time be found and the same be delivered up to the sd (obligees)^(b) witht fraud or delay Then &c. see *ante*, No. CCLXX.

(a) In the case of title-deeds, say, "agst all mtges and or. chas and incumbances anyway affecting the sd messes and preses and agst all and evy psn and psns whomsr claiming any este right or title in or to the same or any pt thof."

(b) In the case of title-deeds, say, "whole and uncanceled without fraud or delay."

No. CCXCIII.

*Bond to Indemnify a Surety against the Penalties of
a former Bond.*No. CCXCIII.
*Indemnity,
(Surety.)*

Obs. Without a bond of this description, called a counter-bond, a surety who pays the debt of his principal is considered merely as a simple contract debtor, *Toussaint v. Martinnant*, 2 T. R. 100; *Ex parte Cockshot*, 3 B. C. C. 502.

Know all &c. see *ante*, No. CCLXVII.

Obligation.

Whas the above-named (*surety*) at the special instance and request of the above-bounden (*obligor*) is in and by a certain bond or &c. bearing even date herewith togr with the sd (*obligor*) held and firmly bound unto E. F. of &c. in the penal sum of £ being the only proper debt of the sd (*obligor*) with a condon thereunder written for making void the same as in and by the sd in pt recited obligation and condon reference being thereto had will more fully appear *And whas* the sd (*obligor*) hath agrd to exte the above-written obligation for indemnifying the sd (*surety*) by reason of his having become surety as afd

Recitals.

Now &c. see *ante*, No. CCLXX. That if the above-bounden (*obligor*) his hrs exs or ass do and shall well and truly pay or cause &c. to be pd unto the sd E. F. his exs &c. the sum of £ with int for the same on the day of next ensuing the date of the sd recited obligation according to the true intent and meaning of the condon thereunder written and if the sd (*obligor*) his hrs &c. shall and do from time to time and at all times hrafr save protect and keep harmless and indemnified the sd (*surety*) his hrs &c. and his and their lds and tents goods and chattels of from and agst all costs chas and dams which he or they shall or may at any time hrafr sustain or be put unto by reason or on account of the sd in pt recited bond or obligation or any matter or thing relating thereto Then &c. see *ante*, No. CCLXX.

Condition.

No. CCXCIV.

*Bond to indemnify one bound for the Obligor in
a Bail Bond.*No. CCXCIV.
*Indemnity,
(Surety.)*

Know all &c. That &c. see *ante*, No. CCLXVII.

Obligation.

Whas by a certain bond &c. bearing &c. the sd (*obligee*) togr

Recital of
former bond.

No. CCXCIV.
Surety.

with the above-bounden (*obligor*) and anor. became bound unto I. F. esq. sheriff of &c. in the penal sum of £ conditioned for the appearance of the sd (*obligor*) before &c. at Westminster on next to answer A. B. in a plea &c. as in &c. will more fully appear

Condition.

Now &c. see *ante*, No. CCLXX. That if the above-bounden (*obligor*) shall appear according to the condon of the sd in pt recited bond to the sheriff and as the law requires And if he the sd (*obligee*) his hrs &c. shall be saved harmless and kept indemnified by him the sd (*obligor*) his hrs &c. and his and their lds &c. of from and agst all and evy sum and sums of money costs chas dams and exps which he or any of them shall or may at any time pay sustain or be put unto by reason of the sd (*obligee*) being bound for the appearance of the sd (*obligor*) as afd Then &c. see *ante*, No. CCLXX.



No. CCXCV.

Indemnity,
(Payment of
Rent.)

No. CCXCV.

*Bond to indemnify against paying Rent where the Title
is in Question.*

Obligation.

Know all &c. That &c. see *ante*, No. CCLXVII.

Recital of
suit.

Whas there is a suit depending betn the above-bounden (*obligor*) and others touching the right and int in the dwelling-house of the sd (*obligee*) situate &c. And whas the sd (*obligee*) hath agrd to pay the rent of the sd house to the sd (*obligor*) yrly as the same shall grow due upon his agreeing to indemnify him therefrom

Condition.

Now &c. see *ante*, No. CCLXX. if the sd (*obligor*) his &c. do and shall well and truly pay &c. all such rent sum and sums of money chas and dams whatsr as shall by due proceedings in law be adjudged or decreed agst him the sd (*obligee*) his &c. and all or. costs and dams whatsr which he the sd (*obligee*) his exs &c. shall sustain or be at by reason of any action suit or forfeiture whatsr which shall or may happen to the sd (*obligee*) his exs ads or ass by reason of paying the sd rent or any pt thof to the sd (*obligor*) his exs ads or ass in manner afd Then &c. see *ante*, No. CCLXX.

No. CCXCVI.

Bond by a Legatee to Indemnify Executors, in case there shall be a Deficiency of Assets.

No. CCXCVI.
Indemnity,
(Executors.)

Obs. If an executor voluntarily pay a legacy, he cannot compel the legatee to refund in case there is a deficiency of assets, unless the executor should prove insolvent, 2 Vern. 205.

Know all &c. see *ante*, No. CCLXVII.

Obligation.

Whas (recite will) And whas (recite death of testator and pro- te of the will) And whas the sd (executors) have consented to pay to the sd (legatee) his sd legacy or sum of £ upon his entering into the above-written obligation with such condon for making void the same as is hnafter expssd

Recitals of
will, &c.

Now &c. see *ante*, No. CCLXX. That if the above-bounden (obligor) his hrs &c. within the space of days next after notice shall have been given him or them under the hands or and of the sd (obligees) or the survivor of them or the exs &c. of each survivor that the personal estate of the sd (testator) has proved sufficient to pay his just debts and funeral and testamentary exps togr with the sevl or. legacies given by his sd will do and shall well and truly repay or cause to be repaid to them the sd (obligees) or the survivor &c. the whole or such proportion of the sd legacy or sum of £ as in such notice shall be expssd and also do and shall from time to time &c. save harmless &c. or or by reason of their or his having paid the sd legacy or &c. to the sd (obligor) as hnbefe is mentd or of any other matter &c. Then &c. see *ante*, No. CCLXX.

Condition.

No. CCXCVII.

Bond to Indemnify the Purchaser of an Estate against Mortgage Money, where no Evidence can be obtained of its having been paid off.

No.
CCXCVII.
Indemnity,
(Payment of
Mortgage
Money.)

Know all &c. see *ante*, No. CCLXVII.

Obligation.

Whas &c. (recite mortgage deed and other deeds affecting the estate) And whas from the recitals contd in the indre of rele of the day of and the length of time since the dates and

Recital of
deeds.

No.
CCXCVII.
*Indemnity,
(Payment of
Mortgage
Money.)*

exons of the sd recited indres of the day and the
day &c. there is ground to presume that the sum of £ by
the indre of &c. secured unto the sd (*mortgagee*) by way of mtge
as afd togr with all int upon or in respect of the sd sum of £
has been long since paid off or satisfied but no positive evidence
of such paymt and release can be obtained at present It was
therefore agrd upon the treaty for the afd purchase that the sd
(*P.*) shd be indemnified by the sd (*V.*) agst the principal sum
of £ and all int as afd

Condition.

Now &c. see *ante*, No. CCLXX. That if the above-bounden
(*obligor*) do and shall well and sufficiently save harmless &c.
the sd messes lds &c. comprised in and expssd to be released
by an indre of rele bearing even date with the above-written
bond And the sd (*P.*) and his hrs &c. in respect thof of from
and agst the sd sum of £ and the int thof and evy pt thof
and of from and agst all actions and suits at law or in equity
which shall be brought &c. and all costs &c. in respect of the
sd sum of £ and int as afd and for or on acct of any act
matter or thing in anywise relating thereto Then &c. see *ante*,
No. CCLXX.



No.
CCXCVIII.
*Indemnity,
(Lost Bond.)*

No. CCXCVIII.

Bond of Indemnity on paying a Lost Bond.

Obligation.

Know all &c. see *ante*, No. CCLXVII.

Recitals of lost
bond.

Whas the above-named master and wardens and society by
their bond or obligation under their common seal bearg date &c.
became bound to the above-named (*obligee*) in the penal sum
of £ conditioned for the paymt of the sum of £ unto
the exs ads or ass of the sd (*obligee*) at the end of mths
next after the dece of the sd (*obligee*) with such prfts upon the
same as upon the then last general audit for the stock raised by
and among the members of the sd society for the making and
preparing &c. shd appear to be due to him and unpd as in and
by the sd bond when produced will more fully appear *And*
whas the sd bond is alleged to be lost or so mislaid that the
same cannot be found *And whas* the sd master wardens and
society on the day of the date hereof at the request of the sd

Satisfaction of
the bond.

(*obligor*) and on his promise of indemnity have made him full satisfaction of and for the sd bond

No.
CCXCVIII.
Indemnity,
(*Lost Bond.*)

Now &c. see ante, No. CCLXX. That if the above-bounden (obligor) his hrs exs or ads or any or either of them do and shall in case the sd bond or obligation shall happen to be found or come to the hands custody or power of him them or any of hem or of any or. psn for them deliver or cause the same to be delivered unto the then master and wardens of the sd society in order to be made void cancelled and destroyed and also shall and do from time to time and at all times hrafr save and keep harmless &c. the sd master wardens and their successors of and from &c. for or by reason of the sd bond or obligation or any of the money thby pd or for touching and concerning the same in anywise howsr Then &c. see ante, No. CCLXX.

Condition.

No. CCXCIX.

No. CCXCIX.
Indemnity,
(*Lost Bill.*)

Bond to Indemnify a Person from a Bill that is Lost, upon his granting another.

Obs. By the 8 & 9 W. 3, c. 17, s. 3, the drawer of a bill may be required, in case it be lost, to give another bill on his being indemnified, but see further, Dig. p. ii. tit. *BILLS (EXCHANGE)*; also *post*, *DEEDS*.

Know all &c. see ante, No. CCLXVII.

Obligation.

Whas the above-named (*obligee*) drew a bill No. dated &c. on Messrs. A. & Co. for the sum of £ paye to the order of E. D. which sd note was aftwds pd to L. & Co. and hath since by them been lost or mislaid *And whas* the sd (*obligee*) at the request of the sd L. & Co. hath given them another bill of the same value and tenor as the bill so lost on their indemnifying him &c. against all claims and demands to be made upon him in respect of the sd lost bill.

Recital of loss
of bill.

Another bill
given.

Now &c. see ante, No. CCLXX. That if the above-bounden L. & Co. or either of them or either of their hrs exs ads or ass do and shall at all times hrafr save and keep harmless and indemnified the sd (obligee) his exs &c. and evy of them and evy of their lds tents goods and chattels whatsr of and from the paymt of the same bill and of and from all and all manner of actions

Condition.

CCXCIX.
Indemnity,
(Lost Bill.)

suits claims and demands whatsr for or on acct of the same bill and of and from all dams costs and chas whatsr which he or they may at any time hrafr sustain bear or be put unto by reason or means of the non-paymt of such lost bill And if the sd L. & Co. do and shall when and as soon as the sd note shall be found deliver the same to the sd (*obligee*) Then &c. see *ante*, No. CCLXX.



No. CCC.

Indemnity,
(Charges under
a Will.)

No. CCC.

Bond of Indemnity to a Purchaser against Two Legacies and an Annuity charged on Hereditaments which the Devisee has contracted to Sell.

Obligation.

Know all &c. see ante, CCLXVII.

Recitals of
will, &c.

Whas &c. (recite the will of R. P. whereby he bequeathed two legacies of £ each to his two grandchildren S. P. and T. P. upon their attaining their age of 21 and an annuity of £ a yr to his brother H. P. and that the sd testator charged the sd legacies and annuity upon the hereditaments thereafter devised to his son J. P. in fee) And whas the sd (purchaser) hath contracted with the sd (vendor) for the absolute sale to him of all &c. and the same pieces or pcls of ld heredit and preses have been duly conveyed to the sd (P.) his hrs and ass in and by certain indres of lease and rele bearing date resply the lease the day next before and the rele even date herewith And whas upon the treaty for such purchase it was agrd by and betn the sd (V.) and (P.) that the sd (V.) shd enter into the above-mentd bond by way of indemnity to the sd (P.) agst the two sd legacies of £ and £ and the sd annty of £ so given and bequeathed by the sd will with a condition for making void the same as hnafr is expssd

Condition.

Now &c. see ante, No. CCLXX. That if the sd (V.) his hrs exs and ads do and shall well and truly pay or cause to be pd to the sd S. P. and T. P. when they shall resply attain their ages of 21 yrs the sd legacies or sums of £ and £ and int according to the direction of the sd will and do and shall at the costs and chas of the sd (V.) his hrs and ass produce and shew to the sd (P.) his hrs and ass good and effectual rects

and discharges for such legacies duly signed by the sd S. P. and T. P. after they shall have attained their respive ages of 21 yrs and do and shall at the like costs and chas give to the sd (P.) his hrs and ass true and attested copies of such rects and discharges if he or they shall request the same And do and shall well and truly pay to the sd H. P. the sd testator's brother the sd annnty of £ as and when the same shall from time to time become due and paye And do and shall from time to time and at all times hrafrtr indemnify save harmless and keep indemnified the sd (P.) his hrs and ass and his and their lds tents goods &c. parlarly the sd heredts and preses so purchased by the sd (P.) as afd of from and agst all actions suits at law or in equity claims demands ejectments and evictions by reason or on account of the sd two legacies &c. and all int which hath accrued or may accrue due thereon and of from and agst the sd annnty of £ so bequeathed as afd and also of from and agst all costs chas and exps which he or they may sustain expend or be put unto for or in respect of such the sd legacies &c. or the sd annnty &c. or of either of them or of any matter or thing relating thereto Then &c. see *ante*, No. CCLXX.

No. CCC.
Indemnity,
(Charges under
a Will.)

No. CCCI.

No. CCCI.
Sale.

Joint and several Bond of Indemnity on the Sale of an Estate.

Know all &c. see *ante*, No. CCLXVII.

Obligation.

Whas by indre of release bearing date &c. divers lands and heredts situated at were granted conveyed and reld to the above-bounden (*obligors*) in conson of the sum of £

Recital of conveyance.

And whas in conson of the sum of £ paid to the sd (*obligors*) befe the date of the above-written bond or obligon the rect whof they the sd (*obligors*) do hby acknge and in pursuance of an agrt in writing bearing date and entered into with them the sd (*obligors*) they the sd (*obligors*) have agreed to enter into the above-written bond &c. subject to the condon hnafrtr contd.

Agreement to enter into bond.

Now &c. see *ante*, No. CCLXX. if the sd (*obligors*) or either of them their or either of their hrs exs and ads do and shall from time to time and at all times hrafrtr at his and their own

Condition.

No. CCCI.

Sale.

costs and chas well and sufficiently save and defend keep harmless and indemnified the sd (*purchaser*) his hrs apptees exs ads or ass and evy of them and his and their and evy of his and their lds tents goods chattels and effects and in parlar the sd manor &c. hnbefe described of from and agst all and all manner of ejectments evictions suits at law or in equity debts paymts costs losses chas dams and exps which from time to time or at any time or times hrafr shall or may be brt sued or prosecuted agst or incurred pd and sustained by the sd (*purchaser*) his hrs &c. by reason of any entry or entries claim or claims to be made in any suit at law or in equity agst the sd (*purchaser*) by any psn or psns whomsr in respect of the sd manor or by reason of any defect of title [if any exist] and if the sd (*obligors*) or one of them do and shall in the event that the sd (*purchaser*) his hrs &c. for the want of a title to the sd manor &c. or any pt of the same shall be evicted in any suit at law or in equity pay or cause to be pd to the sd (*purchaser*) his hrs &c. any sum which shall be the then value of the sd manor &c. to be estimated by two indifferent persons one to be appted by the sd (*obligors*) their hrs &c. and the other by the sd (*purchaser*) his hrs &c. or in case they cannot agree then by such psn as they shall appt or in case either pty shall refuse or neglect to appt an arbitrator then by the referee of the or. pty Then &c. see *ante*, No. CCLXX.



No. CCCII.

*Indemnity,
(Trustees.)*

No. CCCII.

Bond of Indemnity to Trustees under the Obligor's Marriage Settlement for having permitted him to convert Trust Monies to his own Use.

Obligation.

Know all &c. That &c. see ante, No. CCLXVII.

Recitals.

Whas &c. (recite marriage settlt) And whas the sd (obligees) trustees named in the sd recited indre of settlement have at various times at the request of the sd (obligor) duly authorized him to sell and dispose of certain pts of the sd sum of £ 3 per cent Consold Bk Annties and in pursuance of the power so given him he hath converted the monies which have arisen therefrom to his own use And whas the sd (obligees) have

The sale.

d to the sd (*obligor*) for the re-investment in their names
sd sum of £ so disposed of as afd And it being in-
nient to the sd (*obligor*) to comply with such request he
proposed if the sd (*obligees*) will allow him a rease time for
-investment of the same sum to indemnify them in the
time by exting the above-written obligation.

No. CCCII.
Indemnity
(*Trustees.*)

o &c. see *ante*, No. CCLXVII. if the sd (*obligor*) do and Condition.
save defend keep harmless &c. the sd (*obligees*) their and
their hrs exs &c. lands &c. and also the hrs of the sd A.
d of &c. by reason or means or on acct of the sd (*obligees*)
of them having authorized the sale and transfer by him
(*obligor*) of the sd sum of £ or any pt thof or for or
son or on acct of the sd (*obligor*) not having invested or
ed the same £ &c. in the names of them the sd
es) in the bks of the Govrs &c. of the Bank of Engld or
by reason or means of any act matter or thing in anywise
g to the preses Then &c. see *ante*, No. CCLXX.

No. CCCIII.

No. CCCIII.
Daughter's
Fortune.

from a Father to pay a Sum for his Daughter's Fortune
within a certain Time after the Marriage.

now all &c. see *ante*, No. CCLXXVII.

Obligation.

as a marriage hath been agrd upon and is intended soon
had and solemnized betn (*intended husband*) of &c. and
led wife) spinster daur of the above bounden (*father*) by
his wife And *whas* the sd (*F.*) upon the treaty for the
re proposed and agrd to secure the sum of £ as and
e portion or fortune of the sd (*I. W.*) his daur to be pd to
ove named M. B. and G. W. at or befe the end of
next after the sd intended marre with int for the sd sum
from the solemnization thof at the rate of 4*l.* for 100*l.*
e yr *Upon Trust* and for the intents and purps hnaft

Recital of in-
tended mar-
riage.

Agreement.

o &c. see *ante*, No. CCLXX. That if the sd intended marre Condition.
not be had and solemnized or if the sd intended marre shall
d and solemnized and the sd (*F.*) his exs or ads do and

No. CCCIII.
*Daughter's
Fortune.*

shall in such case pay or cause to be pd unto the sd M. B. and G. W. their exs ads or ass the sum of £ at or befe the en of mths next after the sd intended marre shall be had and solemnized with int for the sd sum of £ from the sd solemnization at the rate &c. witht any deduction or abatement what *Upon such Trusts* for such intents and purps and with under and subject to such powers provos agrts and declons as are or shal be decld and expssd concerning the same sum of £ with int in and by an indre already prepared and engrossed and bearing or intended to bear even date with the above written bond or obligon and made or expssd to be made betn (*I. H.*) of the first part the sd (*T.*) and (*I. W.*) of the second pt and the sd M. B. and G. W. of the third pt *Then &c. see ante, No. CCLXX.*

No. CCCIV.
*Married
Woman.*

No. CCCIV.

Bond to a Trustee for securing Annuity to a Married Woman purchased with her separate Estate.

Obs. This requires an *ad valorem* stamp, as on the grant of annuity, see *ante*, ANNUITY; also, Dig. p. ii. tit. BOND.

Obligation.

Know all &c. see ante, No. CCLXVII.

Recital of bequest to the separate use of wife.

Whas under and by virtue of the last will and testmt of S. M. decd bearing date &c. E. A. the wife of G. A. and niece of S. M. became intitld to the sum of £ free from the debts and controul of her husband and for her sole and separate use where with he was not to intermeddle and it was directed that her receipt alone shd be a sufficient discharge *And whas* the sd sum of £ was pd to the sd E. A. and has continued in her hands until the paymt thof as hinafr is mentd *And whas* the sd E. A. hath contracted and agrd with the above bounden (*obligor*) for the purchase of an annty or yrly sum of £ for her life and the true and *bonâ fide* conson to be advanced and given for the purchase of the sd annty is the sum of £ so bequeathed to or in trust for the sd E. A. as afd which she the sd E. A. by herself or her agent hath pd to the sd (*obligor*) *And whas* the sd E. A. hath requested that the above named (*trustee*) may be

Receipt of legacy by wife.

Agreement by wife.

trustee for securing the sd annnty to her for her sole and separate use in manner hereinbefore mentd

No. CCCIV.
Married
Woman.

Now &c. see *ante*, No. CCLXX. That if the sd (*obligor*) his exs ads or ass do and shall from time to time during the natural life of the sd E. A. well and truly pay or cause to be paid to the sd (*T.*) his exs ads or ass one annnty or clear yrly sum £ of &c. by quarterly payments &c. to be made &c. in yr by even and equal portions and clear of all deductions any acct whatsr And do and shall make the first quarterly payment of the sd annnty on &c. next ensuing the date of the sd bond or obligon And in the event of the death of the sd E. A. then or in the interval of any two of the sd quarterly days of payment the sd (*obligor*) his hrs &c. do and shall also well and truly pay or cause &c. witht any deduction &c. whatsr such pt of the sd annnty or clear &c. of £ as shall be in proportion to the time or number of days which inclusive of the day of the decease of the sd E. A. shall have elapsed prior to such decease and after the day of paymt next and immediately preceding that date Then &c. see *ante*, No. CCLXX.

Underwritten Declaration of Trust in respect of this Bond.

It is hereby declared and agreed by and betw the sd E. A. and the sd (*T.*) testified by their subscribing their names and affixing their seals to these presents That the above written bond given and entered into by the sd (*obligor*) to the sd (*T.*) and the sd annnty granted and secured to the sd (*T.*) by these presents is granted and secured to him *Upon Trust* That the sd (*T.*) his exs ads or ass do and shall receive the sd annnty when and as the same shall become due and payable and after deducting all exps attending the covg and recg the same do and shall pay the same annnty unto wh psn or psns and for such uses intents and purps as the sd E. A. as well when married as single and notw her coverture by her present or any future husband and either with or witht any anticipation of the growing paymts thof and at any time or times and from time to time either by any note or memorandum under her hand or by her last will or any writing in the nature of a will shall direct order appt or bequeath the same and in

No. CCCIV.
*Married
 Woman.*

deft of such diron order apptmt or bequest or as to so much thof of which no such diron &c. shall be made do and shall from time to time pay the same to the sd E. A. or orwise permit and suffer her the sd E. A. to rece the same for her own sole use and bent separate and apart from her present or any future husband and so and in such manner that the same may not be under his controul or liable to his debts disposition thof or intermeddling therewith *And* in case of the death of the sd E. A. befe the rect of the sd annty or the arrears thof witht making any such diron &c. as afd *Then* as to so much as shall be due or payee after her dece *In Trust* for the psn or psns who at her dece shall be her next of kin *And* it is also hby decld and agrd by and betn the sd E. A. and the sd (T.) that all and evy the rect or rects which shall be given by the sd E. A. or her apptee or appteas either to the sd (*obligor*) his hrs exs ads or ass or to the sd (T.) his exs ads or ass for all or any part of the sd annty &c. shall be a sufficient dische or sufficient disches to the psns payg the same for so much as shall be thby ackngd to have been recd *And* it is hby furr decld and agrd that when and so often as all or any pt of the sd annty of £ or the arrears thof shall be pd to the sd (T.) his exs &c. witht any previous directions to the contrary by writing under the hand of the sd E. A. That then and so often the sd (*obligor*) his hrs &c. shall from the time of such payment be acquitted and dischg'd of and from the paymt so made and shall not be required to see to the applicon of the sd money or be accbe or answbe for the misapplicon or non-applicon of the same *In witness &c. see ante, No. XLVI.*

No. CCCV.
*Promise to
 Marry.*

No. CCCV

*Condition to Marry a Woman, or, in Default thereof, to pay a
 Sum of Money.*

To marry.

Obs. 1. A condition to marry no other woman than the obligee, she not being bound to marry the obligor, has been held to operate in restraint of marriage, and therefore void, *Low v. Peers*, 4 Burr. 2225.

2. A bond to procure a marriage, called a marriage brocage-bond, is now held to be bad, being contrary to the policy of the law, *Hull*

ie, Show. P. C. 76. Courts of equity will not only decree bonds to be delivered up, but also any sum paid to be refunded, *am v. Ox*, 1 Ves. 275.

No. CCCV.
*Promise to
Marry.*

Condition of this obligation is such that if the above-named (*obligor*) do on or before the _____ according to the usual ceremonies of the church of England marry and take _____ E. D. daughter of the above-named C. D. (a) provided the _____ D. will thereunto assent and the laws of the realm permit _____ ne or if it shall happen that the sd A. B. shall not marry _____ ke to wife the sd E. D. as aforesaid if then he the sd A. B. his _____ ads do and shall well and truly pay or cause to be paid unto _____ E. D. her executors or assigns the sum of £ _____ of lawful money _____ the _____ day of _____ next ensuing the sd day of _____ mented and limited for the sd marriage. Then &c. see *ante*, CLXX.

No. CCCVII.

Mortgage Bond.

No. CCCVII.
Mortgage.

1. It was formerly understood, that a mortgagee taking a bond to himself took it in satisfaction of the debt, and could not, thereupon, recover by an action on the bond, in case the estate on sale in foreclosure should prove inadequate; but it is now held that an action may be brought on the bond for the difference; but this will, in no way, open the foreclosure, and afford an opportunity to redeem, *v. Hartley*, 2 B. C. C. 125; *Schoole v. Sall*, 1 Scho. & Lef.

Where a bond is given for securing the payment of a sum, which is secured by a mortgage or writing charged with the same duty, Stamp. Mortgage, it requires a stamp of only 1*l.*; but where it is the principal security, it requires the same duty as a mortgage, MORTGAGES.

Now all &c. see *ante*, No. CCLXVII.

Now &c. see *ante*, No. CCLXX. That if the above-bounden _____ (or) do and shall pay or cause to be paid unto the above-named (*obligee*) his &c. the full sum of £ _____ of &c. with interest for

Obligation.
Condition.

(a) As to the necessity of this proviso, see *Obs.* 1.

No. CCCVII. Mortgage. the same after the rate of £ for every 100*l.* for a year upon the &c. now next ensuing the date of the above-written obligon witht any deduction or abatement therefrom for or in respect of any chas assessments or or. matter cause or thing whatsr according to the provo or condon contd in a certain indre of lease and release the lease bearing date the day before the rele and the rele even date with the above-written obligon and made or expsd to be made betn the sd (*obligor*) of the first part the sd (*trustee*) of the second pt and the sd (*obligee*) of the third pt And if the above-bounden (*obligor*) his hrs exs or ads and evy of them do and shall in all things well and truly observe perform fulfil and keep all and singr or. the covts grants articles clauses provos condons and agts whatsr which on the pt and behalf of him the sd (*obligor*) his exs and ads are and ought to be observed performed and fulfilled comprised and mentd in and by the sd indre of rele and according to the true intent and purport of the same Then &c. see *ante*, No. CCLXX.

BONDS FOR PAYMENT OF MONEY.

Obs. 1. As to the time and place of paying a bond, see Pref. sect. 7.

How forfeited. 2. Where interest is due upon a bond it has been held, that it will be forfeited by a failure in the payment of the interest as well as of the principal, *Van Sandau v. —*, 1 B. & A. 214.

Stamp. 3. Where the sum secured is certain, the bond requires, by the 55 G. 3, c. 184, an *ad valorem* stamp on the amount, *i. e.* not exceeding 50*l.*, 1*l.*; exceeding 50*l.* and not 100*l.*, 1*l.* 10*s.*; 100*l.* and not 200*l.*, 2*l.*; 200*l.* and not 300*l.*, 3*l.*; 300*l.* and not 500*l.*, 4*l.*; 500*l.* and not 1000*l.*, 5*l.*; 1000*l.* and not 2000*l.*, 6*l.*; 2000*l.* and not 3000*l.*, 7*l.*; 3000*l.* and not 4000*l.*, 8*l.*; 4000*l.* and not 5000*l.*, 9*l.*; 5000*l.* and not 10,000*l.*, 12*l.*; 10,000*l.* and not 15,000*l.*, 15*l.*; 15,000*l.* and not 20,000*l.*, 20*l.*; 20,000*l.* and upwards, 25*l.* Parties may purposely stipulate for the loan of a less sum, in order to avoid the higher duty, *Shepherd v. Hall*, 3 Campb. 180. A bond conditioned for the payment of money and interest, and also for the performance of collateral matter, requires only the *ad valorem* stamp appropriated to the prin-

sum, when that stamp exceeds the 1*l.* 15*s.*, which the collateral
 r would require if it stood alone, *Deardon v. Binns*, 1 Mann.
 l. 130; see further Dig. p. ii. tit. BONDS.

—◆—
 No. CCCVIII.

No. CCCVIII.

Common Condition of a Bond for the Payment of Money.

To pay Money.

Now all &c. That &c. see *ante*, No. CCLXVII.

Obligation.

Now the condition of this obligation is such That if the above-
 len (*obligor*) his hrs exs or ads do and shall well and truly
 or cause to be pd unto the above-mentd (*obligee*) his exs
 and ass the sum of £ of &c. (*a*) with int for the same
 the rate of 5*l.* for evy 100*l.* by the yr on the day of
 now next ensuing the date of the above-written obliga-
 vitht fraud or furr delay *Then* this obligation shall be void
 vise the same to remain in full force and virtue

Condition.

(Obligor) (Seal)

d sealed and delivered by
 above-named (*obligor*)
 ing first duly stamped) in
 presence of

A. B.

C. D.

—◆—
 No. CCCIX.

No. CCCIX.

Condition for the Payment of a Sum of Money by Instalments.

By Instalments.

Now all &c. That &c. see *ante*, No. CCLXVII.

Obligation.

Now &c. see *ante*, No. CCLXX. That if the above-bounden
 or) his hrs &c. do and shall pay or cause to be pd unto the
 -named (*obligee*) his exs &c. the full sum of £ of &c.
 int for the same after the rate of 5*l.* for evy 100*l.* for a yr
 e days and times and in manner following (that is to say)
 um of £ pt thof on the day of next ensuing
 ate of the above-written obligation and which will be in the

Condition.

(a) That is, the sum that is actually due; see Pref. sect. 1.

No. CCCIX. year of our Lord 18 the sum of £ other pt thof on the
By Instalments. day of then next following and the sum of £
 the residue thof with int for the same after the rate afd on the
 day of then next ensuing which will be in the year
 of &c. *Then* this obligation shall be void but if deft shall be
 made in paymt of any or either of the sd sevl and respive sums
 of money with the int thof resply in manner afd or any pt of
 them on any of the sd days and times above-mentd for the
 paymt thof according to the true intent and meaning of these
 prests then this obligation is to remain in full force and virtue.



No. CCCX.

No. CCCX.

Running
 Account.

Bond to secure the Payment of future Advances.

Stamp.

Obs. A bond given to secure the repayment of any sums to be lent in future, where the total amount is not to be ascertained, and without limit, is chargeable with the stamp of 25*l*. Parties may purposely stipulate for the loan of a less sum, in order to avoid the higher duty, *Shepherd v. Hall*, 3 Campb. 180; but it has been held, that where the penalty only is limited, and not the sum to be advanced, this is not sufficient to avoid the highest duty, *Scott v. Allsop*, 2 Price, 20.

Obligation.

Know all &c. That &c. see *ante*, No. CCLXVII.

Condition.

Now &c. see *ante*, No. CCLXX. That if the above-bounden (*obligors*) or either of them his hrs exs or ads do and shall on demand thof in writing or within cal mths after demand (*a*) well and truly pay or cause &c. (*b*) unto the sd (*obligee*) such sum and sums of money [not exceeding in the whole the sum of £] (*c*) as at the time of such demand shall be due from the sd (*obligors*) or the survor of them his exs or ads to the sd (*obligee*) (*d*) his exs

(*a*) If there be partners, say, "for that purpose to be made by the partner or partners for the time being carrying on the business of A. B. & Co. under the present or any future partshp well &c." as above.

(*b*) Or, when there are partners, "unto the sd (*obligees*) or the partner or partners for the time being."

(*c*) As to the stamp, where the sum to be secured is uncertain, see *Obs.*

(*d*) Or, where there are partners, "to the sd (*obligees*) or the ptner or ptners or the time being in the sd house or his or their exs &c."

No. CCCX.
Running Ac-
count.

No. CCCXI.
*Money left in
Trade.*

Obligation.

Whereas the above-bounden (*obligor*) was on the day of Recital of debt
 now last past and is still indebted unto the above-named from one partner to another.
 (*obligee*) in the sum of £ for money book debts and or.
 effects belonging to the sd (*obligee*) as his pt or share of the
 effects which he lately held in ptship with the sd (*obligor*) And
 it was agrd that the sd sum of £ shd be left in the hands of
 the sd (*obligor*) till the expiration of yrs from the
 day of now last past or till the dece of the sd (*obligor*)
 which shall first happen provided the sd (*obligor*) shd elect or
 think proper to continue the sd sum in his hands And that int
 at the rate of by the yr and in that proportion for any less
 time than a yr shall be pd to the sd (*obligee*) his exs and ads for
 the sd sum of £ at the times and in manner hnaft'r mentd
 And that (*obligor*) and the sd I. C. and W. C. as the sureties of
 the sd (*obligor*) shall become bound to the sd (*obligee*) his exs
 and ads jtly and sevly

Now &c. see ante, No. CCLXX. That if the sd (obligor) his Condition.
h^{is} exs or ads or any or either of them or any or. psn or psns
for him or them on his or their behalf do and shall well and
truly pay or cause to be paid unto the sd (obligee) his exs ads or

(e) Or, "by the deposit of the sev'l deeds and papers mentd or enumerated in the schedule to these prests being deeds and papers relating to or which concern the title to All &c. situate &c."

No. CCCXI.
*Money left in
 Trade.*

ass the full sum of £ of lful &c. at or upon such of the days or times next hnafttr mentd as shall first happen that is on the day of 18 or the day of the dece of the sd (obligee) And if in the meantime and until paymt of the sd sum of £ the said (obligor) his hrs exs and ads or any or. psn or psns for him or them or on his or their behalf do and shall well and truly pay or cause &c. unto the sd (obligee) his exs &c. int for the sd sum of £ And also shall and will pay &c. such int half yrly at or upon the day of and the day of in evy yr and do and shall make the first paymt on the day of next ensuing the date of the above-written bond or obligation provided the sd sum of £ shall not be pd in the meantime And in case the sd sum of £ shall be pd betn or in the interval of the sd days of paymt then also do and shall make paymt of a proportional part of the sd int for any less time than for half a yr at the same time and togr with and in addition to the sd principal sum of £ And do and shall make the sevl paymts and evy of them witht any deduction defalcation or abatement whatsr and witht fraud or furr delay Then &c. see No. CCLXX.

No. CCCXII.
*Payment
 (Purchase
 Money).*

No. CCCXII.

*Bond for Payment of Purchase Money retained in
 Purchaser's Hands.*

Vendor's lien
 not affected by
 taking a bond.

Obs. 1. It appears to be now settled, notwithstanding some prior decisions to the contrary, that a vendor does not lose his equitable lien upon the land for the purchase money by taking a distinct security, unless it appear to be the intention of the parties that it should be so, 1 B. C. C. 420; Sugd. V. & P. 551, 8th ed.

Stamp.

2. The same stamp as for a sum certain, see Preface, sect. 3.

Obligation.

Know all &c. That &c. see *ante*, No. CCLXVII.

Recitals.

Whas by an Act of Parlt made &c. intituled "An Act for vesting lands in devised by (testator) late of &c. to &c. in trust to be sold for the bent of the devisees therein named the sevl estes ints and shares of the sd (devisees) are vested and settled in trustees therein named Upon Trust to convey the same

to the above named (*vendor*) his hrs and ass on paymt of the sum of £ and int to the sd (*trustees*) and the survor of them &c. as in the sd Act is directed for that purpose *And whas* the sd (*V.*) hath for the sum of £ absolutely conveyed the sd lands &c. to the above named (*purchaser*) by indres of lease and rele the lease bearing date the day next next before and the rele even date herewith and hath agrd to procure a conveye of the estes shares and ints of the devisees *And whas* by reason of some controversy betn the sd (*V.*) and the sd (*devisees*) touching the division of the sd sum of £ now depending in the Ct of Chancery the estes &c. of the sd (*devisees*) cannot be immly conveyd accg to the sd agrt and it hath been agrd that the sd (*obligor*) shd retain the sd sum of £ and pay int for the same after the rate of £ per cent. per annum.

No. CCCXII.
Payment.
(Purchase
Money).

Now &c. see *ante*, No. CCLXX. That if the sd (*obligor*) shall well and truly pay the sd sum of £ upon having the conveye of the estes parts and shares of the sd (*devisees*) made to him according to the true intent and meaning of the sd agrt and in the mean time do and shall well and truly pay int for the same after the rate as afd *Then* &c. see *ante*, No. CCLXX.

Condition.

No. CCCXIII.

Bond to pay Rent and perform Covenants reserved in a Lease.

No. CCCXIII.
To pay Rent &c.

Obs. A bond conditioned for the payment of an annual rent must be stamped with an *ad valorem* stamp on the gross amount of the rent reserved for the whole of the term, *Attree v. Anscomb*, 2 M. & S. 88.

Know all &c. That &c. see *ante*, No. CCLXVII.

Obligation.

Whas the above named (*lessor*) by indre of lease bearing even date with and exted before the above written obligation For the consons therein mentd hath demised to the above bounden (*obligor*) a messe or tent with the appts situated &c. *To Hold* the same for the term of yrs from the day of next ensuing determinable nevss at the end of the first yrs of the sd term

Recital of lease.

No. CCCXIII. if the sd (*lessee*) his exs or ads shall give mths' notice thof
To pay Rent &c. in manner therein mentd at and under the yrly rent of £
 payable quarterly as by the sd lease may more fully appear
 Condition. *Now &c.* see *ante*, No. CCLXX. That if the above bounden
 (*obligor*) his exs and ads do and shall during the continuance of
 the sd recited lease well and truly pay the sd rent of on the
 four sevl days therein mentd and also do and shall well and
 truly perform all the covts clauses provos and agrts in the sd
 recited lease contd according to the true intent and meaning of
 the same *Then* the above written obligation shall be void and
 of no effect but if deft shall happen to be made in any of the sd
 quarterly paymts or in the performance of any of the sd covts
 then the same shall remain in full force and virtue

No.
 CCCXIII. 2.
*Performance,
 Conditions.*

No. CCCXIII.—2.

Bond for the Performance of Conditions of Sale.

Obligation. *Know all &c.* see *ante*, No. CCLXVII.
 Recital of Sale. *Whas* at a sale by public auction by Messrs. S. &c. at &c. on
 &c. the above bounden A. B. was declared the purchaser of the
 timber comprised in the printed parlar of sale thof being lots 40
 &c. at the sum of £ *And whas* the followg are amongst or.
 the condons of sale " purchaser to pay down &c." (*here set forth*
 Conditions of sale. *the conditions of sale*, and see *post*, CONDITIONS OF SALE) *And*
whas at the time of the sale the above bounden A. B. pd the
 sum of £ being a deposit of £25 *per cent.* on the sd sum of
 Agreement to enter into bond. £ *And whas* the above bounden A. B. C. D. and E. F. have
 agrd to enter into the above written obligon for the due per-
 formance of the sd condons of sale.
 Condition. *Now &c.* see *ante*, No. CCLXX. That the above bounden
 A. B. C. D. and E. F. or either of them their or either of their
 hrs exs or ads do and shall well and truly pay or cause to be
 pd unto the sd G. H. his exs ads or ass the sum of £ of lful
 &c. being the residue of the sd sum of £ at the times and in
 the manner specified in the condons of sale and also do and
 shall well and truly observe perform fulfil and keep all and

singr the condons on the part of the above bounden A. B. to be pd kept done and performed *Then &c. see ante, No. CCLXX.*

No.
CCCXIII. 2.
*Performance,
Conditions.*

No. CCCXIV.

No. CCCXIV.
*To perform
Agreemnts.*

Condition of a Bond for Performance of an Agreement for the Sale of Timber.

Know all &c. That &c. see ante, No. CCLXVII.

Now &c. see ante, No. CCLXX. That if the sd (obligor) his hrs Obligation.
exs &c. do and shall well and truly pay or cause to be pd unto the Condition.
sd (obligee) his exs or ads the sum of £ of &c. according to
the true intent and meaning of certain articles of agrt for the
purchase of timber and or. trees growing on pt of the este be-
onging to the sd (obligee) and situated &c. bearing even date
erewith and made betn &c. and do and shall well and truly per-
form and keep all and evy the articles and condons whatsr which
on the pt and behalf of him the sd (obligor) are or ought to be
performed and kept comprised and mentd in the sd articles of
agrt or the condons there referred to according to the true intent
and meaning thof *Then &c. see ante, No. CCLXX.*

No. CCCXV.

No. CCCXV.
*To perform
Covenants.*

Bond that an Apprentice shall perform the Articles of his Apprenticeship.

Know all &c. That &c. see ante, No. CCLXVII.

Obligation.
Condition.

Now &c. see ante, No. CCLXX. That if the sd I. B. the son
shall and do from time to time and at all times during his sd
apprenticeship well and truly observe perform fulfil and keep
all and evy the articles covts clauses and agrts whatsr in the sd
indre contained and which on his part are to be performed and
shall and do from time to time and at all times during the sd
term be faithful and just to the sd I. L. his master in all his the
sd I. B.'s accts rects paymts and all or. dealings and doings in
anywise relating to the sd trade or employment or the affairs or

No. CCCXV. business of the sd I. L. and all or. matters and things wherein
To perform as an apprentice or servant he shall or may be employed by
Covenants. or concerned for the sd I. L. his exs &c. *Then &c. ante,*
 No. CCLXX.



No. CCCXVI.
Wife to make a
Will.

No. CCCXVI.

Bond to permit an intended Wife to make a Will.

Obs. Regularly, a married woman cannot make a will, either of lands or goods, not even of her paraphernalia, 3 Atk. 294, unless her husband be banished for life by Act of Parliament, *Countess of Portland v. Prodgers*, 2 Vern. 104; or transported, *Newman v. Bowyer*, 3 P. Wms. 37; or an alien enemy, *Deerly v. Duchess of Mazarine*, 1 Salk. 116. But she may make a will with her husband's consent, and it will be deemed an appointment, which the husband is bound by his obligation to perform, *Marriot v. Kinsman*, Cro. Car. 219. The law in this respect remains unaltered by the 7 W. 4 and 1 Vict. c. 26, sect. 8.

Obligation.

Know all &c. That &c. see *ante*, No. CCLXVII.

Recitals of intended marriage.

Agreement for permission.

Whas a marre is intended shortly to be had and solemnized betn the above bounden (*intended husband*) and (*intended wife*) now M. A. spinster *And whas* upon the treaty for the sd marre it was agrd that the sd (*I. H.*) shd enter into the above written obligation with a condon for making the same void as hereunder written

Condition.

Now &c. see *ante*, No. CCLXX. That if after the sd intended marre shall be had and solemnized betn the above bounden (*I. H.*) and the above named (*I. W.*) the sd (*I. H.*) shall and do quietly permit and suffer the sd (*I. W.*) in due form of law to sign seal publish and declare her last will in writing and in and by the same to give will and bequeath or orwise to dispose of at her free will and pleasure unto such psn or psns as to her shall seem meet and convenient the sum of £. of lful &c. *And furr* in case of the sd (*I. H.*) surviving the sd (*I. W.*) if the sd (*I. H.*) his hrs exs or ads or any of them upon reasone request to him or them in that behalf to be made to any such psn or psns to whom she the sd (*I. W.*) shall give and bequeath any such sum and sums of money not exceeding in the whole the sum of or the value thof shall well and truly pay or cause

to be pd all and evy such sum and sums of money so to be given willed or bequeathed as afd by the sd (*I. W.*) in such manner as shall be by her appted *Then &c.* see *ante*, No. CCLXX.

No. CCCXVI.
Wife to make a Will.

—◆—
No. CCCXVII.

Bond to permit a Wife to live separate from her Husband.

No. CCCXVII.
Wife to live separate.

Obs. As to a wife living separate from her husband, see *post*, SEPARATION.

Know all &c. That &c. see *ante*, No. CCLXVII.

Obligation.

Whas I. A. the wife of the above-bounden A. A. by virtue of a certain indre bearing date &c. and made betn the sd A. A. of the one pt and the sd (*trustees*) of the or. pt now lives separate and apart from the sd A. A. her sd husband and follows the business of making and selling And the sd A. A. did agree that his sd wife should have and rece all benefit arising thby or by any or. trade or business which she might think fit to follow to and for her own separate use and support therewith and that he the sd A. A. was not to intermeddle or have any prft or advantage therefrom so as she the sd I. A. did not and shd not contract any debt or debts for which the psn or effects of her sd husband shd or might be sued charged or incumbered in any manner howsr And it was furr agrd that the sd A. A. shd enter into the above-written obligation with the condon hereunder written for making void the same

Recital of separation.

Now &c. see *ante*, No. CCLXX. That if the sd A. A. do and shall from time to time and at all times during the natural life of the sd I. A. permit and suffer the sd I. A. to live separate and apart from him and to have and rece all profit bent and advantage arising or which shall arise from her sd trade or business of making and selling or any or. trade or business which she shall follow or employ herself in to and for her own separate use support and maintenance witht any acct suit trouble or molestation whatsr and witht acting or doing or causing or permitting to be done any act matter or thing whatsr whby or wherewith or by means or occasion whereof the sd I. A. shall or may be molested or incumbered by any ways or means whatsr or if the sd A. A. his hrs exs or ads or his or their lds or

Condition.

No. CCCXVII. *Wife to live separate.* tents goods and chattels shall at any time or times hraft be sued attached or orwise charged or incumbered for or by reason or means of any debt or debts which his sd wife hath contracted or shall or may contract *Then* and in either of the sd cases this obligation to be void orwise &c. see *ante*, No. CCLXX.

POST-OBIT BONDS.

- | | | |
|---------------------------------------|--|-----------------------|
| 1. <i>Definition.</i> | | 3. <i>Stamp Duty,</i> |
| 2. <i>Statutory Provisions as to.</i> | | |

- Definition.** SECT. 1. A post-obit bond is a security for the payment of a greater sum than the sum advanced, where either the payment depends upon a contingency, or, the payment being certain, the time of payment depends upon a contingency. This is a security of a questionable nature, the validity of which has often been disputed with success in a court of equity, where inadequacy of price is deemed to be a sufficient ground for affording relief against such bonds, *Gowland v. De Faria*, 17 Ves. 20.
- Statutory provisions as to.** 2. As a post-obit bond is a bond for a sum certain, or at a time that may be rendered certain, and is therefore a matter of computation, it is held that it does not come within the stat. 8 & 9 W. 3, c. 11, s. 8; but within the stat. 4 & 5 Anne, c. 16, s. 12, *Murray v. E. of Stair*, 2 B. & C. 82.
- Stamp duty.** 3. As to the stamp on the payment of a sum certain, see *ante*, Obs. 3, *Bond for Payment of Money*, p. 622.

No.
CCCXVIII.
Post-Obit.

No. CCCXVIII.

Common Form of a Post-Obit Bond.

- Obligation.** *Know all &c.* That &c. see *ante*, No. CCLXVII.
- Recital of contract for purchase.** *Whas* the above-named (*obligee*) hath contracted and agrd with the above-bounden (*obligor*) for the purchase of the sum of £ to be pd to her the sd (*obligee*) her exs ads or ass in the event of A. B. departing this life in the lifetime of the sd (*obligor*) but not orwise at or for the price or sum of £ *And whas* in performance of the sd recited contract she the sd (*obli-*
- Payment of consideration.**

pd the sd sum of £ of lful &c. unto the sd (*obligor*)
 re the sealing and delivery of the above-written obli-
 : rect and paymt whof accordingly the sd (*obligor*)
 acknge *And whas* upon the treaty for the purchase Agreement to
 contingent sum of £ it was agrd that the paymt give bond.
 d be secured by among or. secties the bond of the sd
 vith the condon &c.

No.
 CCCXVIII.
 Post-Obit.

3. see *ante*, CCLXX. That if the sd A. B. shd depart Condition.
 i the lifetime of the sd (*obligor*) Then and in such case
obligor his hrs exs or ads do and shall well and truly
 use to be pd unto the sd (*obligee*) her &c. within
 next after the dece of the sd A. B. as afd the sum of
 c. Or in case the sd (*obligor*) shall happen to depart
 i the lifetime of the sd A. B. Then &c. see *the last*

No. CCCXIX.

No. CCCXIX.

*m a Vendor of an Estate and his Surety for quiet En-
 ; free from all Incumbrances, the Estate being subject
 Payment of Portions under a Marriage Settlement.*

Quiet
 Enjoyment.

all &c. see *ante*, No. CCLXVII.

Obligation.

the above-named (*obligee*) hath contracted with the Recital of con-
 inden (*obligor*) for the absolute purchase of all &c. tract for pur-
 chance thof in fee simple exonerated and discharged chase.

incumbs whatsr [except a yrly quitrent of per acre]
 rice or sum of *And whas* upon investigating the

Obligation.
 Recitals of
 defects in title.

: sd (*V.*) to the sd heredts it hath been discovered that
 are subject to the payment of certain sums of money
 ortions of the younger sons and daurs of the sd (*V.*)
 is wife by virtue of certain indres of &c. *And whas*
 v) is an infant under the age of 21 yrs and is therefore
 nt to release the sd purchased preses and it is possible
 : may be issue hrafter born of the sd (*V.*) and M. his
d whas upon the treaty for the sd purchase in conson
 ses it was agrd that the sd (*V.*) and also the sd (*surety*)
 ety shd by their jt and sevl bond in a sufficient penalty
 and secure to the sd (*P.*) his hrs apptees and ass the

Agreement to
 enter into a
 bond.

No. CCCXIX. *Quiet
Enjoyment.* quiet and peaceable enjoyment of the sd purchased heredit agst
all psns whomsr as hnafr is expsd

Condition.

*Now &c. see ante, No. CCLXX. That if the sd (P.) his hrs
apptees and ass shall and do from time to time and at all times
hrafr peaceably and quietly have hold and enjoy the sd messe
or tent farm lds and heredit as well freehd as copyhd hnbe
reld or orwise assured or intended so to be and rece and take
the rents issues and prfts thof witht the let suit trouble hin-
drance denial eviction interruption molestation claim or de-
mand whatsr of from or by any psn or psns whomsr And also
be well and effectually saved defended kept harmless and indem-
nified as well from and agst the portions of the sd younger chln
of the sd (V.) and M. his wife if any there should be as from
and agst all former and or. gifts grants bargains sales mtges
leases jointures dower (a) right and title of or to dower estates
titles chas and incumbs whatsr at any time hnbe made done
exted committed suffered or created by the sd (V.) or any or.
psn or psns whomsr Then &c. see ante, No. CCLXX.*

No. CCCXX.

Copyholds.

CCCXX.

*Bond for quiet Enjoyment of Copyholds, free from Incumbrances,
and for further Assurance.*

Obligation.

Know all &c. That &c. see ante, No. CCLXVII.

Recital of
surrender.

*Whas the above-named (vendor) and E. his wife have on the
day of the date hereof surrendered assigned and set over ac-
cording to law and the customs of the sevl manors of which
the preses hnafr described or some pts thof are held by copies
of court roll or orwise All those &c. and also all that &c. and
all that &c. of the sd (vendor) and E. his wife situate &c. except
&c. unto and to the use and behoof of the above-named (pur-
chasers) their hrs and ass for ever*

Condition.

*Now &c. see ante, No. CCLXX. That if the sd (P.) their hrs
and ass shall and do peaceably and quietly hold and enjoy all
and singr the above-mentd preses with their and evy of their*

(a) By the 3 & 4 W. 4, c. 105, the words respecting dower will not be neces-
sary, if provision have been made for it in the conveyance to the vendor.

[except as before excepted] free and clear of and from all er and or. bargains sales surrenders forfeitures chas debts incumbs whatsr had made done committed or suffered by sd (V.) and E. his wife or either of them or by any psn or claiming by from or under the late father of the sd E. *And* that if the sd (V.) and E. his wife and evy or. psn or psns ng or lfully claiming any right title or int in the before-td heredts and preses or any pt thof [except as before ex- ed] by from or under them or either of them or by from or r the late father of the sd E. shall and will during the space yrs now next ensuing at the cost and chas of the sd (P.) : hrs and ass make do and exte such furr surrender or sur- lers and or. assurances whatsr for the better conveying and ring of the sd heredts and preses and evy pt thof [except as re excepted] unto and to the use of the sd (P.) their hrs and as by their or either of their counsel shall be lfully advised required Then &c. see *ante*, No. CCLXX.

No. CCCXX.
Copyholds.

No. CCCXXI.

No. CCCXXI.
Leaseholds.

nd of Indemnity on the Sale of Part of the Premises held nder a Lease against the Rent reserved in the Lease, and for uiet Enjoyment of other Premises, in consequence of a Defect n the Title.

Know all, &c. see *ante*, No. CCLXVII.

Vhas (recite two leases of different dates granted to obligor) d whas (recite defect in the title of the second lease) And is (recite assignment of the leasehold premises from obligor to gee) And whas upon the treaty for the sale and the assnment ssd to be made in or by the sd in pt recited indre bearing n date with the above-written obligation it was agrd that the (obligor) shd enter into the sd bond subject to the condon ftr contd for making the same void

Obligation.
Recital of
leases.

Agreement to
enter into bond.

Now &c. see *ante*, No. CCLXX. That if the sd (obligor) his exs or ads do and shall from time to time and at all times ftr well and effectually save harmless &c. such of the sd ses as are comprised in the lease bearing date the as are

Condition.

No. CCCXXI.
Leaseholds.

expssd to be assd by the sd indre of assnmnt bearing even date herewith And the sd (*obligee*) his hrs exs &c. and evy of them d from and agst the sd yrly rent of £ reserved in the sd in pt recited indre &c. and of from and agst all actions &c. And also if the sd (*obligee*) his exs &c. shall and may at all times during the residue of the sd term demised by the sd indre of lease bearing date &c. peaceably &c. have &c. such of the preses comprised in the sd indre &c. witht the let suit trouble interruption or disturbance of from or by the sd A. B. &c. but subject to the covts and agrts contd in the same indre of lease bearing date &c. (*the first lease*) so far as the same are applicable to such of the preses as are comprised in the sd indre of assnmnt as are expssd to be thby assd discharged of the sd yrly rent Then &c. see *ante*, No. CCLXX.



No. CCCXXII.
*Repairing a
Road.*

No. CCCXXII.

Bond to Repair a Road.

Obligation.

Know all &c. That &c. see ante, No. CCLXVII.

Whas the above-bounden (*obligors*) have contracted and agrd with the sd (*trustees*) above-named at their own costs and chas well and sufficiently to repair and amend from time to time and at all times when and where needful a certain road commonly called beginning at and extending from to

Recital of contract.

comprising a distance of yards more or less And also all and singr the drains ditches aqueducts and conduits adjoining to or under the sd road for and during the term of yrs commencing from the day of next ensuing the date of the above-written obligation the sd (*obligors*) being pd yrly by the sd (*trustees*) during the sd term after the rate of £ per mile by equal half-yrly paymts in evy yr during the sd term the first paymt thof to commence and be made on the day of next ensuing the date of the above-written obligation And the sd (*obligors*) have also agrd with the sd (*trustees*) to find and provide sufficient materials and tools at their own expense at all times during the sd term for the purpe of repairing and keeping in repair such pt of the road as afd And all the drains ditches

nduits thof made or to be made to leave in good and suf-
 repair and condon at the end of the sd term but if the
 igors) or the sd (*trustees*) or any two or more of them
 dissatisfied with the sd contract and shd give to each or.
 nths' notice in writing of their intention to give up or
 the contract that then it shall and may be lful to and for
 pties resply giving such notice in the first or second yr
 te or make void the sd contract at the expiration of such
 resply and the same shall be vacated and made void
 ingly

No. CCCXXII.
*Repairing a
 Road.*

condition therefore of the above-written obligation is such Condition.
 f the above-bounden (*obligors*) their exs ads or ass shall
 r own proper costs chas and exps from time to time and
 imes when and where needful during the sd term of
 ll and sufficiently uphold maintain repair support cleanse
 ep the sd pt of the sd road hnbefe described and evy pt
 id all and singr the drains ditches and conduits adjoining
 onging to or under the same with all and all manner of
 l repairs amendments and works whatsr *And also* do and
 t their own expense find and provide good and sufficient
 als and tools for the purps afd to the satisfaction of the
 es) or such psn or psns as they shall appt according to
 ie intent and meaning of the sd contract and of these
 And if at the end or or. sooner determination of the sd
 f yrs they the sd (*obligors*) shall and do leave the
 t of the sd road and or. the preses afd so well and suffi-
 repaired and amended Then &c. see *ante*, No. CCLXX.

No. CCCXXII.—2.

Bond for replacing Stock.

No.
 CCCXXII.—2.
*To Replace
 Stock.*

1. A contract to replace stock, and in the mean time to pay
 idends, is not usurious, although they exceed the legal rate of
 , *Tate v. Wellings*, 3 T. R. 530. It was formerly doubted
 r a loan of stock was not within the stockjobbing Act of 7 G. 2,
 ut it has since been expressly decided, that if the obligor fail
 ngagement to replace the stock, the obligee may maintain an
 against him to recover the value of the stock on the day ap-
 Bond not
 usurious,
 nor within the
 stock-jobbing
 act.

No.
CCCXXII.—2.
*To Replace
Stock.*

pointed for the transfer, *Sanders v. Kentish*, 8 T. R. 162. But an obligee is not intitled to special damages for any profit he might have made if the stock had been sooner replaced, unless he show that he demanded payment for that express purpose, see further Dig. p. iii. tit. STOCK.

Stamp duty.

2. An *ad valorem* stamp, reckoned on the value of the stock on the day of the date of the bond, or either of the ten days preceding.

Obligation.

Know all &c. That &c. see *ante*, No. CCLXVII.

Recital of loan.

Whas the sd (*obligors*) being in want of a supply of money and the sd (*obligee*) being possessed of a sum or share in the 3 per cent. consolidated Bk Annties hath agrd at the request of the sd (*obligors*) and also on the sd (*sureties*) as their sureties engaging and securing by their bond to transfer to him the same or a like sum in the sd stock or fund at the end of twelve calr mths and in the mean time to pay to him such sum or sums of money as the divds of the sd stock would have amounted unto if the same had not been sold out *And whas* in pursuance of the same agrt the sum of £ 3 per cent. &c. was sold out on the day of inst. and the sum of £ sterling produced thby after deducting commission was pd to the sd (*obligors*)

Condition.

Now &c. see *ante*, No. CCLXX. That if the above-bounden (*obligors*) or (*sureties*) or any or either of them do and shall on or before the day of next ensuing duly purchase and transfer the sum of £ 3 per cent. &c. to or in the name of the sd (*obligee*) and do and shall in the mean time pay to him such and the same sum and sums of money as the divds of the sd sum of £ 3 per cent. &c. would amount to if the same were not sold out but remained in his name and at such and the same sevl days and times as the same divds would in that case become paye Then &c. see *ante*, No. CCLXX.



No.
CCCXXIII.
*To Resign
Office.*

No. CCCXXIII.

*Bond of Resignation as Master of a Free-school, in case of
Negligence, &c.*

Obligation.

Know all &c. (*for the form of the obligation from one to a corporation, see ante*, No. CCLXIX.)

Recital of
election.

Whas the court of assistants of the above-named company in

pursuance of the trust in them reposed did on &c. elect and choose the above-bouden (*obligor*) to be chief schoolmaster at in the co. of founded and endowed by &c. decd during his diligent and faithful discharge of his duty in such behalf

No.
CCCCXXIII.
To Resign
Office.

Now &c. see *ante*, No. CCLXX. That if the sd (*obligor*) from Condition.
time to time and at all times hraft during his continuance in the sd place or office of schoolmaster do and shall observe perform fulfil obey and keep all rules and orders already made or to be made by the sd company for the better regulation of the sd school and scholars *And also* do and shall faithfully diligently and carefully exte perform and discharge his duty and office in the sd place of chief schoolmaster of the sd school in all respects whatsr for the bent and credit of the sd school according to the trust in him reposed by the sd company *And* if at any time the sd court of assistants of the sd company being convinced to their satisfaction that the sd (*obligor*) is apparently negligent of the sd duty and trust in him reposed to the detriment and injury of the sd school and scholars and shall thereupon see good and sufficient cause and reason to remove and displace the sd (*obligor*) from his sd place of master of the sd school and do and shall elect and choose some or. psn to succeed him then if the sd (*obligor*) do and shall within mths after the notice thof to him given or left in writing for him at the sd school under the hands of the master and wardens of the sd company or any three of them peaceably and quietly leave surrender and resign his sd place of chief schoolmaster togr with the posson of the sd school and school-house with the apts to such psns as shall be apptd to succeed him *And also* if the above-bouden (*obligor*) his exs or ads on the death or removal of him the sd (*obligor*) from the place of schoolmaster of the sd school do not remove take or carry away or cause to be removed &c. from the dwelling-house which the sd (*obligor*) will reside in as master of the school any mantle-pieces bars bolts locks keys &c. now standing and affixed in and to the sd house or pull down demolish or in anywise wilfully deface or damage the sd dwelling-house or the brewhouse or or. outhouses thereunto belonging and therewith used and enjoyed but do and shall on the death or removal of him the sd (*obligor*) as afd leave sur-

No.
CCCXXII.—2.
*To Replace
Stock.*

pointed for the transfer, *Sanders v. Kentis*
obligee is not intitled to special damages f
made if the stock had been sooner rep'
demanded payment for that express
tit. Stock.

Stamp duty.

2. An *ad valorem* stamp, recd
the day of the date of the bond.

Obligation.

Know all &c. That &c.

Recital of loan.

Whas the sd (*obligor*

and the sd (*obligee*)

3 per cent. consoli

the sd (*obligors*) a

engaging and ser

or a like sum i

mts and in

money as th

Sale of stock.

if the sar

the same

on the

prodr

(*obl*

Condition.

y are now, in confirmation of the common law, made v'
ified cases.

Know all &c. That &c. see ante, No. CCLXXVI.

Whas the rectory of the church of in the co. of
and diocese of is vacant by the death of I. H. clk th
incumbent therein And the above-named (*obligee*) bei
patroness of the sd rectory and church hath by writing
her hand and seal bearg date &c. presented the above-b
(*obligor*) to the bishop of the sd diocese To the end that
sd (*obligor*) may be admitted instituted and inducted int
rectory and church as afd And *whas* the above-bounden
hath agrd to be psonally resident in the sd parish of
so long as he shall continue rector or incumbent th
procuring or accepting any qualification or licence fro
or psns for dispensing with his the sd (*obligor's*) resic
upon the sd parsonage And *whas* the sd (*obligee*) hat
who are now all infants but probably some one of t
may be desirous of taking holy orders and of being

To resign in
favour of pa-
tron's son.

in favour

al bonds of resignation
equity would interfere only
made of such bonds; but in the
of *London v. Ffytche*, the House of
on after a general bond of resignation
ntly that a bishop could not be compelled,
ances, to induct the person presented to him;
since that decision special bonds of resignation
a good, *Lord Sondes v. Fletcher*, 5 B. & A. 835;
Ld. Sondes, 1 Bligh, N. S. 144; and by the 9 G.

ance of the trust in them reposed did on &c. elect and
 e the above-bounden (*obligor*) to be chief schoolmaster at
 in the co. of founded and endowed by &c. decd
 his diligent and faithful discharge of his duty in such

No.
 CCCXXIII.
 To Resign
 Office.

w &c. see *ante*, No. CCLXX. That if the sd (*obligor*) from Condition.
 o time and at all times hraft during his continuance in
 l place or office of schoolmaster do and shall observe per-
 fulfil obey and keep all rules and orders already made or
 made by the sd company for the better regulation of the
 hool and scholars *And also* do and shall faithfully dili-
 and carefully exte perform and discharge his duty and
 in the sd place of chief schoolmaster of the sd school in
 spect whatsr for the bent and credit of the sd school
 ling to the trust in him reposed by the sd company *And*
 ny time the sd court of assistants of the sd company being
 aced to their satisfaction that the sd (*obligor*) is apparently
 gent of the sd duty and trust in him reposed to the detri-
 and injury of the sd school and scholars and shall there-
 see good and sufficient cause and reason to remove and
 ce the sd (*obligor*) from his sd place of master of the sd
 l and do and shall elect and choose some or. psn to suc-
 him then if the sd (*obligor*) do and shall within mths
 the notice thof to him given or left in writing for him at
 l school under the hands of the master and wardens of the
 mpany or any three of them peaceably and quietly leave
 der and resign his sd place of chief schoolmaster togr
 the posson of the sd school and school-house with the appts
 ch psns as shall be apptd to succeed him *And also* if the
 e-bounden (*obligor*) his exs or ads on the death or removal
 n the sd (*obligor*) from the place of schoolmaster of the sd
 l do not remove take or carry away or cause to be removed
 om the dwelling-house which the sd (*obligor*) will reside
 master of the school any mantle-pieces bars bolts locks
 &c. now standing and affixed in and to the sd house or
 lown demolish or in anywise wilfully deface or damage the
 elling-house or the brewhouse or or. outhouses thereunto
 ging and therewith used and enjoyed but do and shall on
 eath or removal of him the sd (*obligor*) as afd leave sur-

No.
CCCXXIII.
*To Resign
Office.*

render and yield up the same as aforesaid peaceably and quietly to the said master and wardens or to such other person or persons as they shall appoint to take possession thereof whole and undefaced [reasonable use and wear thereof in the mean time only excepted] Then &c. see *ante*, No. CCLXX.

No.
CCCXXIV.
*To
resign Living.*

No. CCCXXIV.

Bond to reside upon a Parsonage, and to resign in favour of the Patron.

Obs. Formerly, general as well as special bonds of resignation were held good at law, and a court of equity would interfere only when a bad use was attempted to be made of such bonds; but in the well known case of the *Bishop of London v. Ffytche*, the House of Lords held that a presentation after a general bond of resignation was illegal, and consequently that a bishop could not be compelled, under such circumstances, to induct the person presented to him, 2 B. P. C. 211. Since that decision special bonds of resignation have been held good, *Lord Sondes v. Fletcher*, 5 B. & A. 835; *Fletcher v. Ld. Sondes*, 1 Bligh, N. S. 144; and by the 9 G. 4, c. 94, they are now, in confirmation of the common law, made valid in specified cases.

Obligation.

Know all &c. That &c. see *ante*, No. CCLXXVI.

Recital that
church is
vacant.

Whas the rectory of the church of in the co. of and diocese of is vacant by the death of I. H. clerk the last incumbent therein And the above-named (*obligee*) being the patroness of the said rectory and church hath by writing under her hand and seal bearg date &c. presented the above-bounden (*obligor*) to the bishop of the said diocese To the end that he the said (*obligor*) may be admitted instituted and inducted into the said rectory and church as aforesaid And *whas* the above-bounden (*obligor*) hath agreed to be personally resident in the said parish of so long as he shall continue rector or incumbent there without procuring or accepting any qualification or licence from any person or persons for dispensing with his the said (*obligor's*) residence in or upon the said parsonage And *whas* the said (*obligee*) hath several sons who are now all infants but probably some one of the said sons may be desirous of taking holy orders and of being presented to

Agreement to
reside.

To resign in
favour of pa-
tron's son.

the sd rectory and the sd (*obligor*) hath agrd in that event to resign the sd rectory or living upon the request of the sd (*obligee*) or the owner of the sd rectory for the time being in order that any son so taking holy orders may be presented thereunto.

No.
CCCXXIV.
To
resign Living.

Now &c. see *ante*, No. CCLXX. That if the sd (*obligor*) shall procure himself to be legally admitted &c. into the sd rectory as afd *And also* if he shall continue to reside in and upon the sd parsonage of &c. for so long time as he shall be rector there witht procuring or accepting any qualification or licence from any psn or psns whomsoever whby to dispense with the sd (*obligor's*) residence in or upon the sd parsonage *And also* if any son of the sd (*obligee*) shall take orders and the sd (*obligee*) or the owner of the sd rectory for the time being shall present such son of the sd (*obligee*) to the sd rectory and the sd (*obligor*) within calr months after request made to him for that purpe do and shall resign the sd living to the bishop of the diocese for the time being and cause such resignation to be accepted so that the sd rectory may become vacant *And also* within the same month give notice of such resignation to the sd (*obligee*) her exs ads or ass Then &c. see *ante*, No. CCLXX.

Condition.

Common Form of a Respondentia Bond, see post, SHIPPING.

No. CCCXXV.

Bond for securing a Sum of Money by the intended Husband to the Wife, and the Issue of the Marriage.

No.
CCCXXV.
To secure
Money to Wife.

Obs. A bond conditioned for the payment of money after the obligor's death, given to a woman in contemplation of the obligor's marrying her, and intended for her benefit, is held to be a good marriage contract at law, and is not extinguished by the subsequent marriage of the parties, *Milbourne v. Ewart*, 5 T. R. 381. Courts of equity consider such bonds as agreements for a settlement of which specific performance will be strictly enforced, as well for the benefit of the issue of the marriage as for the wife, *Prebble v. Boghurst*, 1 Swan. 309.

No. CCCXXV.

*To secure
Money to Wife.*

Obligation.

Recitals.

Know all &c. That &c. see ante, No. CCLXVII.

Whas a marre is intended to be shortly had and solemnized betn the above-bounden (*obligor*) and M. the daur of the above-named R. P. *And whas* the sd (*obligor*) in conson of the marriage portion or fortune of the sd M. P. hath agreed that if the sd intended marre shall take effect and the sd M. P. shall happen to survive him the sd (*obligor*) and there shall not be any child or chn of the sd marre nor any issue of any such child or chn then living or afterwards born alive the sum of £ shall be pd out of his este and effects unto the above-named (*obligees*) or the survor of them or the exs &c. upon trust to pay the same to the sd M. P. for her own proper use and bent but in case the sd M. P. shall happen to survive him the sd (*obligor*) and there shall be any child or chn of the sd marre or any issue of such child or chn then living or aftwds born Then and in such case the hrs exs or ads of the sd (*obligor*) shall within mths next after his dece well and truly pay or cause to be pd unto the sd (*obligees*) or the survor &c. the full sum of £ upon the trusts hnafter mentd

Condition.

Now &c. see ante, No. CCLXX. That if the sd intended marre shall take effect and the above-named M. P. shall happen to survive the sd (*obligor*) and there shall not be any child or chn of the sd marre nor any issue of such child or chn who shall be living at the dece of him the sd (*obligor*) or aftwds born Then and in such case if the hrs exs or ads of the sd (*obligor*) shall immly after the dece of the sd (*obligor*) well and truly pay or cause to be paid unto the sd (*obligees*) or the survor &c. the full and just sum of £ of lful money of &c. upon trust to pay the same unto the sd M. P. for her own proper use and bent or in case the sd M. P. shall happen to survive the sd (*obligor*) and there shall be any child or chn of such marre or any issue of such child or chn living at such the dece of him the sd (*obligor*) or aftwds born alive then and in such case if the hrs exs or ads of the sd (*obligor*) shall and do within mths next after the dece of him the sd (*obligor*) well and truly pay or &c. unto the sd (*obligees*) or the survor &c. the full and just sum &c. upon the trusts and to and for the intents and purps hnafter mentd and expssd of and concerning the same that is to say upon trust that they the sd (*obligees*) or the survor &c. do and shall as soon as

conveniently may be after the rect of the sd sum of £ lay No. CCCXXV.
 out and invest the same in the purchase of such parliamentary *To secure*
 or government secty or secties as they shall think fit and pay to *Money to Wife.*
 or orwise permit and suffer the sd M. P. or her ass to rece and
 take the int divds and prfts during her natural life *And* from
 and immly after der dece *In trust* that they the sd (*obligees*) or
 the survor &c. do and shall pay and dispose of the sd sum of
 £ and assign and transfer the secties wherein the same shall
 be then vested unto and equally among all and evy the child
 and chn of the body of the sd (*obligor*) on the body of the sd
 M. P. his intended wife to be begotten that shall be living at
 the time of the dece of the sd M. P. and the issue which shall
 be then living of such child or chn of the sd (*obligor*) and M. P.
 as shall happen to die in the lifetime of the said (*obligee*) or
 M. P. such issue nevss to take only the same share and propor-
 tion thof as his her or their respive father or mother would have
 been intituled to if living at the dece of the sd M. P. Then &c.
 see *ante*, No. CCLXX.

No. CCCXXVI.

No.
CCCXXVI.

Bond for securing a Sum of Money and conveying all the Es- *To settle Money,*
tates of which the Obligor shall become seised during his life, *&c.*
for the Benefit of his Wife and the Issue of the Marriage.

Obs. As to a bond for settling estates, see *Obs. last Precedent.*

Know all &c. That &c. see *ante*, No. CCLXVII.

Whas &c. (*recite intended marriage, see last Precedent*) *And*
whas the sd (*I. H.*) in conson of the sum of £ to be paid to
 him at or before the marre and as the marre portion or fortune
 of the sd (*I. W.*) *And* also in conson of the love and affection
 which the sd (*I. H.*) bears to the sd (*I. W.*) and for making a
 provision for the sd (*I. W.*) and the issue of the sd intended
 marre in case the same shall take effect Hath agrd not only to
 pay such a sum of money to such psns and at such times as is
 hnafr mentioned but also that if at any time during the term of
 his natural life he shall be seised of any messes tents lds or
 hereds in posson he will by such good conveyances in the law

No.
CCCXXVI.
To settle Money,
&c.

as counsel shall advise settle the same upon the sd (*I. W.*) and the issue of the sd intended marre in such pts and proportions and to such use and uses as shall be thought requisite the better to make a provision for the sd (*I. W.*) and the issue of the sd intended marre

Now &c. see ante, No. CCLXX. That if the sd intended marre shall take effect and the sd (*I. W.*) shall survive the above-bouden (*I. H.*) Then if the hrs exs ads or ass of the sd (*I. H.*) shall within months next after his dece pay to (*trustees*) or the survor of them or the exs or ads of such survor the sum of £ *In Trust* for the sd (*I. W.*) her exs &c. *And also* if the sd intended marre shall take effect and the sd (*I. H.*) shall survive the sd (*I. W.*) and there shall be any child or chn of the sd intended marre living at the time of the dece of the sd (*I. H.*) Then if the hrs exs or ads of the sd (*I. H.*) shall within mths next after his dece pay the sum of £ to the sd (*trustees*) or the survor &c. *In Trust* to pay and distribute the same unto and amongst all and evy the child and chn of the sd intended marre share and share alike if there shall be more than one and if but one then wholly to that one at the respive age or ages of 21 yrs And in the mean time to pay and apply the int divds and proceeds arising from the sd sum of £ for the use of such child or chn equally if more than one and if but one then wholly to that one *And furr* that if the sd intended marre shall take effect and the sd (*I. H.*) shall at any time during his natural life become seised of any messes tents or lds in posson and shall settle the same upon the sd (*I. W.*) and the issue of the sd intended marre by such good conveyances in the law as counsel shall advise in such pts and proportions and to such use and uses as shall be thought requisite the better to make a provision for the sd (*I. W.*) and the issue of the sd intended marre Then &c. *see ante, No. CCLXX.*



No. CCCXXVII.

No.
CCCXXVII.
Trustees.

Bond given by Vendor to discover whether Trustees of a Term are living or not, and in the mean time to indemnify Purchaser.

Know all &c. see ante, No. CCLXVII.

Obligation.

Whas (recite indenture by which the term was conveyed to trustees, and also the absence of such trustees). Recitals.

Now &c. see ante, No. CCLXX. That if the above-bounden (vendor) his exs and ads do and shall use his and their utmost endeavours to discover the sd trustees or whether either of them is still living and if the survivor of them is dead then also to discover the psn or psns who is or are the psl reptive or reptives of such survor and also do and shall immediately after ascertaining the survor of the sd trustees and the death of such survor then provided such survor died or eventually has become intestate witht any expence to the sd (purchaser) his hrs appteas or ass obtain or cause or procure letters of admon to be obtd of the goods chattels and credits of the survor of them the sd trustees so far at least as the same are left unadministered and relate to or concern the sd term of yrs in the freehd messes so sold and conveyd or orwise assured to the use of the sd (purchaser) his hrs appteas or ass as afd And also if the sd (vendors) or either of them or either of their hrs &c. do and shall give to the sd (purchaser) his hrs appteas or ass notice of the psn or psns in whom the residue of the sd term is vested and in what right as soon as the same can be ascertained And if the sd trustees or the survor of them or the psnl reptive or reptives of such survor do and shall on the request of the sd (purchaser) his heirs appteas or ass immly assign the sd term of yrs to such psn or psns and to and for such uses intents and purps as he the sd (purchaser) his hrs appteas or ass shall appoint And if in the mean time the sd (vendors) or either of them do and shall indemnify &c. (see ante, No. CCLXXXVI. indemnity clause against eviction, &c.) Then &c. see ante, No. CCLXX.

Release of a Bond, see post, RELEASE (DISCHARGE).

Canals, &c.

CANALS, RAILWAYS, &c.

Obs. In the construction of canals, railways, docks, and other public works for which an Act of Parliament is required, the Standing Orders of the House of Commons must be consulted, as a compliance with those orders is necessary throughout all the proceedings relating to the obtaining of such private bills. The Standing Orders may be procured at the office for the sale of Parliamentary Papers, Great Turnstile, Lincoln's Inn Fields.

—◆—
Local Act for making a Canal by an Incorporated Company,
see *ante*, No. XXIV.

—◆—
Local Act for making a Railway, see *ante*, No. XXVII.

—◆—
Assignment of a Canal Share, see *ante*, No. XXIV. sect. 62.

—◆—
Assignment of a Mortgage of the Tolls granted to a Canal Company, see *ante*, No. XXIV. sect. 41.

No.
CCCXXVIII.
Certificate.

No. CCCXXVIII.

Certificate or Ticket of a Canal or Railway, &c. Share.

Obs. This certificate or ticket is usually made by Acts of Parliament evidence of a proprietor's title, see *ante*, No. XXIV. sect. 39.

These are to certify That A. B. *is a proprietor of and intitled to one share* No. *of the undertaking of the* *Com-*
pany incorporated by statute made in the *year of the*
reign of her Maj. intitled (*here set out the title of the Act*).

Given under the common seal
of the said Company at their
office at

(Clerk)

Conveyance to the Company of Lands purchased, see ante, No. XXIV. sect. 17.

Canals, &c.

Mortgage of Tolls by the Proprietors of —, see ante, No. XXIV. sect. 41.

No. CCCXXIX.

Notice of Intention to apply for an Act of Parliament to make a Canal.

No.
CCCXXIX.
Notice.

Obs. 1. This form may be adapted to the making a railway, harbour, bridge, &c.

2. Such notices are required by the Standing Orders, sect. 15, to be published in three successive weeks in the months of October and November, or either of them, immediately preceding the session of Parliament in which application for the bill is to be made, in the *London, Edinburgh, or Dublin Gazette*, as the case may be, and in some paper of the county in which the city, town, or lands to which such bill relates is situate; and if there be no newspaper published therein, then in the newspaper of an adjoining county; and if the bill does not relate to any particular city, town, or lands, then in the *Gazette* only, the same to be delivered at the office two clear days previous to the publication of the same, see further as to publishing notices, Standing Orders, *ub. sup.*

3. A map or plan, with a book of references to the owners and occupiers, must be deposited with the clerk of the peace, see *Ellis's Precedents of Proceedings in Parliament on Private Bills*.

Notice is hereby given to all whom it may concern That application is intended to be made to Parliament in the ensuing session for leave to bring in a bill for making and maintaining a navigable cut or canal from the harbour or wet dock at in the parish of in the county of to the township of in the parish of in the county of near to a certain mill known or commonly called by the name of and to join and communicate with a canal belonging to the company of proprietors of the navigation from to *And for*

No.
CCCXXIX.
Notice.

forming and maintaining reservoirs for the better supplying the same with water together with locks docks basins feeders and aqueducts for the purposes aforesaid *And* also for the erecting steam engines and other machines for raising water *And* for making all necessary quays wharfs warehouses staiths and landing places adjoining thereto at or upon the grounds situate at

And also for diverting or altering the present course of the river in near or through the several parishes of in the said county for a space not exceeding so as to connect the said canal with the said river by means of a lock or short cut at the east side of in the said parish of which said canal is intended to be made in or pass through the several parishes townships vills hamlets or places of in the said county *And* also for making convenient roads ways avenues and approaches to the said harbour from the green on the north side of the town of in the said county and from or near the Crown public house on the south side of the church of to join the high road leading from E. to L. in the county of and also from the foot of the hill near the parish of in the county of to join the lane R. leading to the bridge over the river S. and along the banks of the same to where it joins the river M.

Dated this day of By order
A. B. (*solicitor*).



No.
CCCXXX.
Notice to Owner.

No. CCCXXX.

Notice to Owner or Occupier of Lands wanted for the Completion of a Canal, Railway, Harbour, &c.

Obs. A notice in the following form is required by the Standing Orders of the House to be given on or before the 31st *Dec.*, immediately preceding the application of a bill by which any lands or houses are intended to be taken, see *STANDING ORDERS*, sect. 17.

Sir,

We beg to inform you that application is intended to be made to Parliament in the ensuing session for an Act (*here insert the title of the Act*) and that the property mentioned in the annexed schedule, or some part thereof, in which we understand you are

interested as therein stated, will be required for the purposes of the said undertaking, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of yards on either side of the said line which will be applied for in the said Act, and will be passed through in the manner mentioned in such schedule.

No. CCCXXX.
Notice to Owner.

We also beg to inform you that a plan and section of the undertaking, with a book of references thereto, has been or will be deposited with the several clerks of the peace of the counties of (*specify the counties in which the property is situate*) on or before the 30th of November, and that copies of so much of the said plan and section as relates to the parish in which your property is situate, with a book of reference thereto, have been or will be deposited for public inspection with the clerk of the said parish (schoolmaster of the parish, town clerk of the royal burgh, or the postmaster of the post town in or near such parish *as the case may be*) on or before the 31st day of December instant, on which plans your property is designated by the numbers set forth in the annexed schedule.

As we are required to report to Parliament whether you assent to or dissent from the proposed undertaking, or whether you are neuter in respect thereto, you will oblige us by writing your answer of assent, dissent, or neutrality in the form left herewith, and returning the same to us with your signature on or before the day of next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

We are, Sir,

Your most obedient Servants.

No. CCCXXXI.

Petition to Parliament for a Railway Act.

Obs. Columns for signatures of the petitioners, not being members of Parliament, to be engrossed on parchment in words at length, and to be annexed when presented to an estimate signed by an engineer of the expences, an account of the money subscribed, with the names

No.
CCCXXXI.
Petition.

No.
CCCXXXI.
Petition.

of the subscribers; also a list of the owners and occupiers of lands to be used for the undertaking, specifying the parties assenting and dissenting, with a duplicate of the map or plan deposited with the clerk of the peace, see *Ellis's Precedents of Proceedings in Parliament on Private Bills*; *Bramwell's Manner of Proceeding on Private Bills in the House of Commons*.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled

The humble petition of the several persons whose names are hereunto subscribed being owners of estates in the county of or merchants and traders residing in the city of L. and the city of B.

Sheweth

That the making a railway with proper works and conveniences adjoining thereto or connected therewith for the passage of waggons and other carriages from or near the town of L. in the county of M. in or through the sevl parishes of to the township of S. together with two branches commencing at or near to certain closes or lands called R. in the township of W. in the parish of P. will be of great advantage to the inhabitants of the said county town and neighbourhood by opening a cheap and expeditious mode of communication between the two leading towns of and of That one branch extending itself northwardly into or near to a certain close or field in the township of G. opposite or near to B. potteries will communicate by means of a tramroad with the harbour or wet dock of P. and the other branch extending itself to the east of the church of N. as far as the mill at O. will communicate with the canal of L. And also that this latter branch will open a short and easy communication from the town of F. to the sea and afford a cheap and ready conveyance of agricultural produce and other commodities from thence and facilitate the supply of goods wares and merchandize from different quarters of the world And also that your petitioners and all other owners of estates merchants manufacturers tradesmen and residents near to the said intended railway are desirous of having the benefit of such communication and of forming themselves into a company for the purpose of carrying the undertaking into execution but they cannot effect

purposes aforesaid without the authority of Parliament *And*
 er that for the completing the said railway it will be expe-
 to make a tunnel through the town of L. and divert the
 se of the river O. and to make a viaduct over the and
 effectuating the several purposes aforesaid it will be necessary
 urchase many lands and houses and to obtain power for so

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 CCCXXXI.
 Petition.

5
 Your petitioners therefore humbly pray that leave may be
 given to bring in a bill or bills for forming or making
 the said railway and branches thereof and the said
 tramroad and tunnel and for effectuating the several
 other purposes above mentioned by such ways and
 means and under such rules and regulations provisoes
 and restrictions as this Honourable House shall judge
 proper and expedient

(petitioners' names.)

No. CCCXXXII.

Appointment of a Proxy to vote at a Court of Proprietors.

No.
 CCCXXXII.
 Proxy to Vote.

bs. It is a usual provision in Canal and other Acts that a pro-
 or, or in case of infancy and lunacy, the guardian or committee
 proprietor, may appoint a proxy to vote at any meetings, *see ante*,
 XXIV. sect. 44.

A. B. proprietor (or "guardian," or "committee of A. B.
 c. proprietor") of shares in navigation (or "railway,
 &c." *as the case may be*) do hereby nominate constitute and
 int C. D. of &c. in my name and in my absence to vote and
 my assent or dissent to any business or thing relating
 eto which shall be proposed at any general or special meet-
 of the proprietors of company or any adjournment
 eof at all times hereafter until I shall revoke this appoint-
 t by notice in writing to the clerk of the said company *In*
 ess whereof I have hereunto set my hand this day of
 A. B.

Obs. As to the stamp duties on such certificates, actions respecting the taking out such certificates, see ATTORNEYS.

—◆—
Certificates to exempt Sales by Auction from t
see ante, AUCTIONS.

—◆—
Certificates in Bankruptcy, see ante, BANKR

—◆—
Certificates as to Bills of Exchange, see BILLS (E

—◆—
Certificates as to Canal Shares, see ante, CAN

—◆—
Certificates as to the delivery of Goods &
see post, NOTES AND ORDERS.

No.
CCCXXXIII.
Benefice.

—◆—
No. CCCXXXIII.

A Certificate to the Ordinary, of the Conditio
Dwelling House belonging to a Benefice

Obs. By the 17 G. 3. c. 53. s. 5. the ordinary and 1

No.
CCCXXXV.

No. CCCXXX

A Certificate of a Mortgag

Obs. A certificate of this kind, which Acts, must be on unstamped parchment the mortgagor and mortgagee in the pr must prove upon oath, before the registr of the same. And if the witnesses are i the money, the mortgagor and mortgage satisfied. The certificate is then to be fil on record. In the Act relating to Mid fined to mortgages only, and does not ex judgments and recognizances, see furth
MENT.

To the Registrar of Riding in
lawful Deput

We the sd I. H. of &c. and D. V
and mortgagee in a certain indre of
day of and made between
and the sd D. W. of the or. pt (a me
gistered in the sd office the day
book marked or called page
certify to the sd Registrar or his D
owing and secured in the sd indre a
discharge thof And we do hby req
made of such payment and satisfactio
register-book opposite to the entry
Act of Parlt in that case directs As
day of

Witnesses to the
signing hereof

G. L.
H. B.

Certificate of a Canal or Rail
CANALS, RAILWA

No. CCCXXXVI.

Certificate of the Residence of an Incumbent.

No.
CCCXXXVI.
*Residence of
Incumbent.*

Obs. A certificate of this kind is required, by the 17 G. 3, c. 53, to be given by an incumbent, in order to intitle him to raise money upon mortgage under that Act.

We A. B. rector (*or* "vicar") of the parish of in the diocese of clerk and C. D. &c. clerk do hereby certify that E. T. incumbent of the parish church aforesaid hath resided upon his living or benefice within that parish for the space of twenty weeks between the day of and the day of last

Given under our hands the day of A. B.
C. D.

No. CCCXXXVII.

Certificate of an Articled Clerk having regularly served his Clerkship.

No.
CCCXXXVII.
*Service of
Clerkship.*

I do hereby certify that A. B. son of &c. on the day of in the yr of our Lord 18 did become articled to me by indenture of that date as my clerk with me to dwell and me to serve for the space of five yrs to continue from the date and expiration of the said articles *And* I do also certify that the said A. B. in pursuance of the said articles during all the said term of five yrs hath diligently and faithfully served me in that capacity *And* I do recommend him as a person to be admitted an attorney of her Majesty's Court of Queen's Bench according to the intent and meaning of the statute made in the 22nd yr of the reign of his Majesty George II. intituled "An Act for the better Regulation of Attornies and Solicitors" (*or according to the late Act 6 & 7 Vict. c. 73, see Dig. p. iii. tit. SOLICITORS*) Witness my hand this day of in the yr of I. H.

Witness C. D.

No.
CCCXXXVIII
Title to Orders.

No. CCCXXXVIII.

A Certificate of the Nomination of a Curate as a Title for Orders.

Obs. By the 33rd canon, it is ordained, that no person shall be admitted into sacred orders, except he shall exhibit to the bishop presentation of himself to some ecclesiastical preferment then void in the diocese, or a certificate that he is provided with some church within the diocese where he may attend the cure of souls. If a bishop ordains any person without any of these titles, he must maintain him until he shall prefer him to some ecclesiastical living, under the penalty of being suspended from giving orders for the space of one year, Gib Cod. 161.

To the Right Rev. Father in God Lord Bishop of

These are to certify to your Lordship that I (*rector*) rector (or "vicar") of in the co of do hereby nominate and appoint A. B. to perform the office of a curate in my church of at and do promise to allow him the yearly sum of £ for his maintenance in the same and to continue him to officiate as curate in my sd church until he shall be provided with some other certain place where he may exercise his ministerial functions unless on account of any fault by him committed he shall be fully removed from performing the office of a curate in my sd church by your Lordship or your successor And I hereby solemnly declare that I do not fraudulently give this certificate to entitle the sd A. B. to receive holy orders but with a real intention to employ him in my sd church according to what is before expressed As witness my hand this day of

CHARGES.

No. CCCXXXIX.

No.
CCCXXXIX.
On Land.

Charge of a Bond-debt on Land, by Indorsement on the Bond.

Obs. The *ad valorem* stamp being impressed on the bond accompanying the deposit of deeds, the common deed stamp only will be necessary upon this instrument, see BONDS and MORTGAGES.

Know all Men by these Prests That I the within-named

(*obligor*) having deposited the title deeds of or relating to my freehd and leasehd estates situate &c. for better securing the paymt of the within mentd sum of £ *Do* hby charge and make chargeable all and every my sd freehd and leasehd estates with the payment of the sd sum of £ and int at the time and in the manner within mentd And do also promise and agree for myself my hrs exs and ads that I and they shall and will at the request of the within-named (*obligee*) his exs &c. make do and exte at my or their expense all such furr acts and assurances in the law as shall be requisite for the more effectually charging the sd preses with the paymt thof as shall be reasonably advised or devised by the sd (*obligee*) or his counsel in the law
In witness &c.

No.
 CCCXXXIX.
 On Land.

Annuity, &c. by way of further Charge, see post,

FURTHER CHARGE.

CHARTER PARTIES,

See post, SHIPPING.

CLAUSES IN DEEDS,

See post, INDEX TO PRECEDENTS.

COMMON FORMS,

See post, INDEX TO PRECEDENTS.

Composition.

COMPOSITION.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. <i>Modes of Arrangement between a Debtor and his Creditors.</i>
 <i>Deed of Inspection.</i>
 <i>Deed of Composition.</i>
 <i>Letter of Licence.</i>
 <i>Assignment of Debtor's Estate.</i> 2. <i>Assignment for a Composition by Deed or Parol.</i> 3. <i>Assent of the Creditor expressed or implied.</i> | <ol style="list-style-type: none"> 4. <i>Terms of the Contract to be strictly complied with by Debtor.</i> 5. <i>When Securities can be retained.</i> 6. <i>Composition Contracts must be fair.</i> 7. <i>Covenant not to sue.</i> 8. <i>Release.</i> 9. <i>Assignment of a Person's Property in Trust, when valid.</i> 10. <i>No preference in Payments under a Trust Deed.</i> 11. <i>Stamp on a Composition Deed.</i> |
|---|--|

Modes of arrangement between a debtor and his creditors.

Deed of inspection.

Deed of composition.

Letter of licence.

Assignment of debtor's estate.

Assignment for a composition by deed or parol.

SECT. 1. Creditors may enter into any arrangements with a debtor which may best suit the convenience of the parties; and the courts will construe all composition contracts so as to give full effect to them. The mode of effecting such an arrangement must depend upon the circumstances of the case. When a debtor wishes only for time, a simple agreement to that effect may be sufficient; but the more usual mode in this case is to execute a deed called a *Deed of Inspection*, by which a debtor is enabled to carry on his business for the benefit of the creditors under the inspection of trustees. Another mode of effecting an arrangement is by the creditors agreeing to accept a composition, or a part of their respective debts, in satisfaction of the whole; and the instrument by which this is effected is called a *Deed of Composition*; frequently a memorandum of an agreement to accept a composition is drawn up at the meeting of the creditors, as a preliminary to a more formal deed. In both these deeds, it is usual to insert a covenant, called a *Letter of Licence*, whereby the creditors agree to give the debtor, for a certain time, liberty to pursue his affairs without the danger of being arrested or sued. Sometimes this covenant is given by a separate instrument. The last and most frequent mode of effecting such an arrangement, is by the debtor conveying or assigning his estate to trustees, for the benefit of the creditors, which may be done by one or by separate instruments, according to the nature of the transaction. Sometimes debtors who are not traders voluntarily adopt this mode of paying their debts, in which case the creditors are usually not parties.

2. Every agreement between a debtor and his creditors ought to be by deed; and if the instrument is to operate as a release or discharge at law of a specialty debt, it cannot be otherwise, *Lowe v. Eginton*, 7 Price, 604; 6 Petersd. Abridg. 2. At law, an agreement not under

seal to accept a less sum in satisfaction of a greater one than is due, is not binding, Co. Litt. 212, b.; *Pennel's Case*, 5 Co. 117; although followed by acceptance of payments, *Heathcote v. Crookshanks*, 2 T. R.; *Fitch v. Sutton*, 5 E. 230; unless there be some new and sufficient consideration, *Steinman v. Magnus*, 11 E. 390; but an agreement not under seal is not of itself evidence of the consideration, 7 T. R. 350, n. See AGREEMENTS, Pref. sect. 7.

Composition.

3. The assent of a creditor to a composition contract is necessary to make it binding on him; but this assent may be either expressed or implied, *Butler v. Rhodes*, 1 Esp. 236; and a verbal promise to accept a composition and execute the deed will prevent the creditor from suing for the original cause of action, *Bradley v. Gregory*, 2 Campb. 383. So in equity, creditors are in general as much bound by acting under a deed of composition as if they had signed the deed, *Ex parte Sadler*, 15 Ves. 52; but a creditor is not bound by a composition deed to which he is a party, if he have been induced to sign it by any misrepresentation made to him, *Cooling v. Noyes*, 6 T. R. 263.

Assent of the creditor, expressed or implied.

4. If the terms of the composition are not strictly complied with by the debtor, the creditor is released from his obligation, *Cranley v. Hillary*, 2 M. & S. 120; and a court of equity will not relieve the debtor, if he do not strictly perform the agreement, 1 Eq. Ab. 28; *Rose v. Rose*, Ambl. 332; *Mackenzie v. Mackenzie*, 16 Ves. 372. So where the creditors had agreed to take a composition, and after the first payment the debtor became a bankrupt, it was held that the creditors were intitled to prove under the commission for the residue, *Ex parte Bennet*, 2 Atk. 528; *Ex parte Vere re Palmer*, 1 Rose, 281; *Ex parte Peel*, ib. 434.

Terms of the contract to be strictly complied with by debtor.

5. If the composition deed contain no stipulation respecting securities, a creditor may retain them, provided he deduct the sum to be recovered upon the security, and take a composition for no more than what remains due, *Thomas v. Courtenay*, 1 B. & A. 1. But where a creditor having received the full amount of his composition, and given the debtor his release, recovered sums on bills formerly given as a security, such sums have been considered as money received to the debtor's use, *Stock v. Mawson*, 1 B. & P. 286. So where a creditor, after having executed a deed of composition, refused to set the amount of his debt to his name, upon the ground of his having a security, he was held to have bound himself to the extent of his then existing debt, and that he could not recover upon the security, *Harrhy v. Wall*, 1 B. & A. 103; S. C. 2 Stark. 195; *Holmer v. Viner*, 1 Esp. 131.

When securities can be retained.

Composition.
Composition
contracts must
be fair.

6. A fair and equal composition contract, without fraud or contrivance, will be established both at law and in equity; but any secret agreement between a debtor and a creditor, to secure to the latter payment of a sum beyond that secured to the others, is not only voidable but absolutely void at law, *Cockshott v. Bennett*, 2 T. R. 763; *Jackson v. Lomas*, 4 T. R. 166; *Feise v. Randall*, 1 Esp. 224; and courts of equity will not enforce any agreement securing to some creditors who had executed a deed of composition a greater advantage than the other creditors would have under the deed, and without their knowledge, *Child v. Danbridge*, 2 Vern. 72; *Middleton v. Onslow*, 1 P. Wms. 708; *Manson v. Stock*, 6 Ves. 300; *Cecil v. Plaiston*, 1 Anst. 202; *Fawcett v. Gee*, 3 Anst. 910; and a debtor may recover back money which he has been compelled to pay in consequence of any private bargain with a creditor, *Smith v. Cuff*, 6 M. & S. 160; yet any advantage which a creditor may obtain, not in fraud of the other creditors, has been held to be good, *Feize v. Randall*, 6 T. R. 146; and a preference may be rendered valid in equity by the agreement being notified to the other creditors and sureties, *Jackman v. Mitchell*, 13 Ves. 586. By the 6 G. 4, c. 16, s. 133, it is provided, that where, at two successive meetings of creditors, after due notice given, nine-tenths in number and value of those present agree to accept a composition, the Lord Chancellor may supersede the commission.

Covenant not
to sue.

7. A covenant not to sue the debtor at all is a release, and the covenant may be pleaded in bar of an action; but a covenant not to sue within a given time is not a release, but a covenant, and remedy may be had on the covenant, *Carivil v. Edwards*, 1 Show. 330; *Lacy v. Kinaston*, 1 Ld. Raym. 690; S. C. Holt's Rep. 178; S. C. 1 Salk. 575; *Dean v. Newhall*, 8 T. R. 168. A condition not to sue a debtor within a named time under a penalty does not extend to the executors, unless they are named in the deed, 1 Show. 331.

Release.

8. A release of partnership debts executed by one partner concludes the firm, contrary to the general rule, that one partner cannot bind another by deed, *Aston v. Booth*, 4 B. Moore, 192. If a release is to be given to only one out of two or more joint debtors, it must be expressly so stated, otherwise it will operate as a discharge to both, *Solly v. Forbes*, 2 Bing. & Brod. 38. As to releases, see further RELEASE.

Assignment of
a person's prop-
erty in trust,
when valid.

9. An assignment by a person not a trader, or not subject to the bankrupt laws, of all his property for the benefit of creditors, is valid, although a preference be given to some creditors above others, *Estwick v. Caillaud*, 5 T. R. 424; and it be made to defeat a creditor

of his execution, *Pickstock v. Lyster*, 3 M. & S. 371. Before the 6 G. 4, c. 16, an assignment by a trader of all his estate and effects was held to be an act of bankruptcy, and also fraudulent and void, unless it was done with the concurrence of all the creditors, *Rush v. Cooper*, Cowp. 29; *Law v. Skinner*, 2 Bl. 996; *Eckhardt v. Wilson*, 8 T. R. 140; but, by s. 4 of that statute, such an assignment executed by all the trustees, within fifteen days after its execution by the trader, provided it be duly advertised and a commission do not issue within six calendar months after its execution by the trader, shall not be deemed an act of bankruptcy. But where the assignment is conditional, and the condition is not performed by the debtor, the creditors may avoid the deed, *Wiglesworth v. White*, 1 Stark. 218. If creditors are to execute a deed of assignment by a stated time, or the deed to be void if it be not executed within the time, it will be void at law; but it is good in equity, if it be afterwards executed by all the creditors, although not until subsequently to the death of the debtor, *Spottiswoode v. Stockdale*, Cooper, 105.

10. Under a provision in a trust deed for the payment of debts of various descriptions, no preference is implied; which, if intended, must be clearly shown, otherwise the Court favours equal payments, *Wadeson v. Richardson*, 1 V. & B. 103; but a trust deed for the payment of debts extends only to debts contracted at the time, *Purefoy v. Purefoy*, 1 Vern. 28. As to trusts, see further, CONVEYANCE IN TRUST FOR CREDITORS, and TRUST DEED.

No preference
in the payment
of debts under
a trust deed.

11. A composition deed, or other instrument of composition between a debtor and his creditors, requires a stamp of 1l. 15s., and the further progressive duty of 1l. 5s. for every entire number of 1080 words over and above the first 1080; but although signed by each creditor separately, yet being one whole transaction, requires but one stamp, *Boven v. Ashley*, 1 N. R. 278.

Stamp on a
composition
deed.

No. CCCXL.

Articles of Agreement between a Debtor and his Creditors, where Inspectors are appointed to superintend the Insolvent's Affairs.

No. CCCXL.
Deed of
Inspection.

Obs. As to the nature of this deed, see *supra*, Pref. sect. 1; and as to the stamp, see Pref. sect. 11.

Articles &c. see *ante*, No. XLVI. Betn (debtor) of &c. of the first pt (inspectors) of &c. being respive crs of the sd (D.) of the

No. CCCXL. <i>Deed of Inspection.</i>	second pt and (<i>creditors</i>) the sevl or. persons whose names and seals are hereunto subscribed and affixed being also respive crs
Recital of debts.	agts or atties of crs of the sd (<i>D.</i>) of the third pt <i>Whas</i> the sd
Meeting of creditors.	(<i>D.</i>) stands justly indebted to the sevl psns pties hereto of the second and third pts or their respive ptners or constituents in several sums of money <i>And whas</i> at a meeting of the crs of the sd (<i>D.</i>) on &c. the sd (<i>D.</i>) having represented to the sd crs then present that in regard there were large sums of money due to him from psns resident in her Maj. plantations and elsewhere abroad and of divers adventures being outstanding he was unable to proceed in carrying on his trade and immediately satisfy his sd crs their respive debts and the sd crs having duly weighed and considered the same and being satisfied that the stock and effects in trade of the sd (<i>D.</i>) are fully sufficient to pay and satisfy his respive debts did resolve and agree that it would be most advantageous to the crs of the sd (<i>D.</i>) that the sd (<i>D.</i>) should be permitted to collect and dispose of his este and effects under the inspection of the sd (<i>I.</i>) who were then unanimously chosen for that purpe for the term of two yrs from &c. last
Agreement for an appointment of inspectors.	<i>Now these Prests witness</i> That in pursuance of the sd agt and for carrying the same into full effect and in conson of the covts hrafr contd on the pt of the sd (<i>D.</i>) They the sd (<i>I.</i>) and the sevl or. psns pties hereto as crs or atties or agts of crs <i>Have</i> and each of them <i>Hath</i> given and granted and by these prests <i>Do</i> and each of them <i>Doth</i> [so far as they respively may and lfully can] give and grant unto the sd (<i>D.</i>) full free and absolute
Letter of licence.	liberty and licence according to his own free will and pleásure to go come pass repass abide and continue to from and at all or any place or places where the nature of his affairs may require and to manage collect get in and dispose of all his este debts and effects under the inspection and control of the sd (<i>I.</i>) or some three or more of them and in such manner as they shall judge to be most conducive to the bent of the sd crs from the day of the date of these prests until &c. which will be in the
Covenant not to arrest debtor.	year of &c. <i>And</i> the sd (<i>I.</i>) and the sevl psns &c. do hby for themselves resply and for their sevl and respive hrs exs ads ptners and constituents but not any of them for the or. or ors of them or for the hrs exs ads acts or deeds of any or. or ors of them but each of them for his own hrs exs ads acts and deeds

only covt promise and agree with and to the sd (*D.*) his hrs exs and ads that they the sd creditors and the several psns &c. their exs ads ptners or agents or any or. psn or psns for them or by the order authority assent consent or procurement of them resply shall not nor will (*a*) sue arrest (*b*) prosecute molest attach detain take in custody or exon imprison or orwise impede or incumber him the sd (*D.*) or his este or effects in any manner howsr *And furr* That if any of them the sd (*I.*) or the sd or. crs or any of their exs &c. or constituents shall so do contrary to the true intent and meaning of these prests this present letter of licence shall operate to all intents and purps and may be pleaded in bar to the sd respive debts and to any prosecution suit or action that shall or may be brt agst the sd (*D.*'s) psn goods or chattels as afd within the time afd as effectually as if he had a general release under the hands and seals of such crs resply for that purpe *And* the sd (*D.*) doth hby in furr pursuance of the sd agrt and in conson of the sd licence hnbefe given unto him as afd for himself his hrs exs and ads covt &c. with and to the sd (*I.*) and all or. the crs or ptners atties and agts of crs of him the sd (*D.*) and also with and tq each and every of them in manner following that is to say That the sd (*D.*) shall and will as soon as may be draw out and state a true and exact acct in writing of all his este and effects as well real as psl and of the several chas outgoings and incumbs now affecting the same and bring the sd este to a balance and shall and will thereupon deliver such acct after being signed by him unto the sd (*I.*) *And also* shall and will if thereunto required by them the sd (*I.*) or either of them verify the truth of such accts on oath before one of the Masters of the High Court of Chancery *And furr* that he the sd (*D.*) shall and will from time to time and at all times observe perform and exte the orders instructions and advice of them the sd (*I.*) *And also* shall and will use his best endeavours in and about the management and collecting receiving settling and converting into money all the este and effects of him the sd (*D.*) *And also* shall and will when and so

No. CCCXL.
*Deed of
Inspection.*

Debtor cove-
nants.

To state his
accounts.

To verify them
on oath.

To obey instruc-
tions.

To use his best
endeavours in
managing his
estate.

To deposit mō-
nies with
bankers.

(a) As to the effect of this covenant, see Pref. sect. 7.

(b) It is presumed that the 1 & 2 V. c. 110, in regard to imprisonment for debt, will not affect the private arrangements between debtor and creditor.

No. CCCXL. <i>Deed of Inspection.</i>	often as there shall be monies in hand arising from the sd este and effects pay and deposit the same into the hands of such banker and bankers as the sd (I.) shall direct To the end that the same may be distributed among the sevl crs in the manner
Not to dispose of his estate without consent.	hnr mentd <i>And furr</i> that he the sd (D.) shall not nor will at any time during the sd term [unless he shall before that time have paid unto the sd crs the whole of his debts] convey alienate
Nor undertake any other trade.	dispose of pledge or incumber any of his real or psal este <i>And also</i> shall not nor will by himself or with any or. psn become engaged in or undertake any new trade or commercial transaction orwise than as such shall be by and with the consent of
Nor give pre- ference to any creditors.	the sd (I.) <i>And</i> shall not nor will do or suffer to be done any act deed matter or thing whtsr whby any of the crs of him the sd (D.) shall or may obtain secty (a) or secties for his or their debt or debts or any preference or priority of payment thof or of any pt thf contrary to the true intent and meaning of these
Nor release debts, &c.	prests <i>And</i> shall not nor will release any debt or debts nor bring any action or suit for recovering any such debt or debts witht
Keep books of account.	the licence and consent of the sd (I.) <i>And furr</i> that the sd (D.) shall and will keep proper bks of acct and enter or cause to be entered a fair just and regular acct of all rects and paymts and of all or. transactions matters or things as shall be requisite in order to shew the true state and condon of the este and
Preserve letters, &c.	effects of him the sd (D.) <i>And also</i> shall and will preserve all letters recd from and take copies of all letters written or sent by him to all and evy his correspondents or or. psn or psns whomsr <i>And also</i> shall and will permit them the sd (I.) to examine and inspect the same accts papers letters and writings relating to the este and effects of the sd (D.) when and as often as they shall
Cash to be drawn out, &c. on draft of debtor for one inspector.	think proper <i>And</i> it is hby agrd and decld by and betn all the sd pties hereto that all the mos bills notes or secties for money arising by or from the este and effects of the sd (D.) and from the gains and prfts of his sd trade [and which shall be pd into such banking-house as afd] shall there remain and not be drawn out

(a) The courts will set aside all securities whereby one creditor, under contracts of this kind, endeavours to obtain an undue advantage over the rest, *Leicester v. Rose*, 4 East, 271, recognized in *Howden v. Haigh*, 3 P. & D. 661; see further, *ante*, Pref. sect. 6.

cept for the purps hnaft mentd unless the sd (*I.*) or the sur-
 s or survor of them or the inspector or inspectors for the time
 ng shall in the mean time think it will be for the bent of the
 e of the sd crs to lay out and invest the same in the purchase
 government funds East India bonds or navy or exchequer bills
 id which they or he is empowered to do from time to time
 en and so often as he or they shall think proper] and that all
 d evy sum or sums to be taken out of the sd banking-house
 the time being for any purpe whatsr shall be by draft to
 signed by the sd (*D.*) and one at least of the sd (*I.*) or the
 ror &c. and that the sd (*D.*) shall and will upon evy request
 the sd (*I.*) or the inspector or inspectors for the time being
 n such drafts or orders upon the sd banking-house *And* it
 hby furr deld and agd by and betn all the sd pties to these
 ests that it shall and will be lful to and for the sd (*I.*) or the
 spectors for the time being by and out of the mos which shall
 paid into the hands of to their acct as afd to pay and
 charge all the debts due and owing from the sd (*D.*) unto
 y psn or psns whomsr which do not exceed the sum of £
 ply when and as the same shall become due and paye *And*
 all and may make the sevl paymts in the order and manner
 aftr mentd that is to say In the first place shall and may pay
 d satisfy all sums of money which in the judgmt of the sd (*I.*)
 all be necessary or requisite for carrying on the sd business of
 e sd (*D.*) as afd *And* in the next place shall and may pay
 d allow unto the sd (*D.*) such an annual sum of money not
 ceeding £ for his maintenance and support as the sd (*I.*)
 all think proper *And* subject to the paymts afd shall and
 y from to time when and so often as there shall be in hand
 oney sufficient to answer and pay shillings in the pound
 on or in respect of the several debts now due or owing from
 e sd (*D.*) to the several psns pties hereto of the second and
 ird pts pay and distribute all such mos unto and amongst the
 vl crs rateably and proportionably according to the amount
 their respive debts *And* after full payment satisfaction and
 scharge of all and singr the afd debts and sums of money and
 all the costs chags and exps occasioned by or attending the
 on of the trusts deld by these prests shall and do pay over
 e surplus of the sd trust mos unto the sd (*D.*) his exs or ads

No. CCCXL.
*Deed of
 Inspection.*

Inspectors to
 distribute
 monies.

In paying debts
 under £ .

Allowance for
 the subsistence
 of debtor.

Among the rest
 of the creditors
 rateably.

Surplus to
 debtor.

No. CCCXL.
*Deed of
Inspection.*

Creditors to
grant release
to debtor.

Provide that if
default be made
by debtor, &c.
this agreement
to be void.

for his and their absolute use and bent or as they shall direct & appt *And* it is hby furr mutually decl'd and agd by and betw all the sd pties hereto and each of them the sd crs or agents &c. of crs pties hereto doth hby for himself his hrs &c. sevly but not jtly covt with the sd (*D.*) that in case all the crs &c. of the sd (*D.*) who are pties hereto shall not before the day of have recd the whole of their respive debts now due from the sd (*D.*) to the sd crs resply and if the sd (*D.*) shall on the sd day well and sufficiently convey assign and deliver upon oath if required unto such psn or psns as shall be named by the majority of the crs of him the sd (*D.*) at a meeting to be holden pursuant to notice given in the *London Gazette* for that purp all such pts of his present este and effects as shall then remain not divided or orwise applied according to the true intent and meaning of these prests for the use and bent of all the present crs of the sd (*D.*) in such manner as they the sd crs or the major pt of them shall require [he the sd (*D.*) having well and truly observed and performed all and evy the covts and agts herein contd on his pt to be performed and observed except only with respect to the paymt of the whole of his debts within the period afd] Then and in such case the afd crs their exs &c. who are pties hereto shall and will upon such assnment and delivering up resply duly exte to the sd (*D.*) legal general releases thby releasing and for ever discharging the sd (*D.*) his hrs exs and ads from all the debts and sums then due and owing from the sd (*D.*) to such crs resply and from all accts actions suits means methods and remedies in law or in equity which they can or may have claim or maintain for recovery thof *Provided always* nevss and it is hby resply decl'd and agd to be the true intent and meaning of all the sd pties hereto that if the sd (*D.*) shall make deft in performing all every or any of the sd covts clauses stipulations and agts hnbefore contd and covted to be performed on his part or if all the crs of the said (*D.*) whose debts amount to the sum of £ [except only such crs who are possessed of any or. securities (*a*) for their debts and choose to rely thereon] shall not by themselves or their respive atties or agents thereunto legally authorized duly exte these prests or

(a) As to such securities, see *encl.*, Pref. sect. 5.

orwise accede or agree to the terms hereof within the respive spaces of time herein next after mentioned that is to say within

No. CCCXL.
*Deed of
Inspection.*

next after the date hereof and within Then and in either of the sd cases this present indre and the licence and liberty and every article clause matter or thing herein contd shall cease determine and be utterly void (*add here, if necessary, proviso for appointing new inspectors, indemnity to inspectors, &c. as in the Trust Deed and Assignment of Stock &c.*)

In witness &c. see ante, No. XLVI.

—◆—
No. CCCXLI.

No. CCCXLI.
*Agreement for a
Composition.*

*Memorandum of an Agreement at a Meeting of Creditors
to accept a Composition.*


Obs. As this is mostly an informal instrument not under seal, it is prudent to stipulate that a more formal deed shall be executed, see Pref. s. 2.

Memorandum. At a meeting of the creditors of A. B. of &c. held at on the day of It is concluded and agrd on as follows that is to say That we the creditors whose names are hereunder written have this day sevly and resply agrd for ourselves and for our sevl and respive exs ads ptnrs and ass with the sd A. B. his exs and ads to accept rece and take the sum of s. in the pound in full satisfaction and discharge of our respive debts within the space of calr months from the date hereof to be secured by notes drawn upon and accepted by C. D. of &c. as the surety of the sd A. B. And we the sd creditors do hby furr agree that each of us the sd crs will exte a deed of composition to be forthwith duly prepared within days from the date hereof and will use our best endeavours to induce all the other crs of the sd A. B. to do the same

Witness our hands this day of

A. B.
C. D.
E. F. &c.

—◆—



No. CCCXLII.
Deed of.

No. CCCXLII.

Deed of Composition.

Obs. As to the effect of such a deed, see Pref. s. 6; and as to the stamp, see s. 11.

This Indre made &c. see *ante*, No. LXXXV. Betn (*debtor*) of &c. of the first pt (*surety*) of &c. of the second pt and (*creditors*) the sevl psns whose names and seals are hereunto subscribed and affixed being also respive crs or agents or atties of crs of the sd (*D.*) of the third pt *Whas* the sd (*D.*) was on the day of &c. and still is indebted to the several pties hereto of the third pt in the sums of money resply set opposite to their names (*a*) and is at present unable wholly to pay and satisfy the same *And whas* there is no probability that the sd (*D.*) will be enabled to pay and discharge his crs the whole of their respive demands but he is desirous to liquidate the same to the utmost of his ability and therefore hath proposed and agd with and to the sd sevl crs pties hereto of the third pt to pay unto them within the space of days from the date of these prests the sum of shillings in the pound in full of their respive debts (*b*) And the sd (*surety*) having agd to become surety with the sd (*D.*) for the punctual paymt of the sd sum of shillings in the pound within the time afd They the sd sevl crs pties hereto have consented and agd to accept and rece the same as a composition in full of their respive debts and to exte and grant unto the sd (*D.*) such letter of licence as hnafr is mentd *Now this Indre Wilnesseth* That in pursuance of the sd proposal and agt on the pt of the sd (*D.*) and (*S.*) and to the intent that the sd (*D.*) may be wholly discharged and exonerated from the paymt of the sevl debts and sums of money which he now owes and in conson of

Testatum.

(a) As to the effect of omitting to set any amount of debt to the name of a creditor, see Pref. s. 5.

(b) Or, if it be so agreed, say, "to pay them a composition of s. in the pound upon the amount of his sevl debts to be secured and made paye by the instalments and in manner following that is to say the sum of s. in the pound upon the amount of the sd debts to be pd at the time of the exon of these prests and the remaining sum of s. in the pound to be secured by the jt and promissory notes of the sd (*D.*) and (*S.*) paye at the expiration of mths and mths."

the agt herein contd on the pt of the sd sevl crs to accept the provision hby made in full discharge of their claims upon the este and effects of the sd (D.) They the sd (D.) and (S.) hby severally covt promise and agree with and to the sevl crs pties hereto that they the sd (D.) and (S.) or one of them his exs or ads shall and will (a) within the space of days to be computed from the date hereof well and truly pay or cause to be pd unto the sd sevl pties hereto of the third pt their respive trustees ptnrs agents atties exs ads or ass the sum of shillings in the pound upon the amount of their respive debts set opposite to their respive names at the foot of these prests and witht any deduction or abatement whatr *Provided (b) always* and it is hby agd and decld betn and by the sd pties to these prests That if all the crs of him the sd (D.) whose debts resply amount to £ or upwards shall not by themselves or their respive agents and atties duly authorized and apptd for that purpe accordg to the provo hnafttr contd duly exte these prests within the space of days to be computed from the date hereof or if any fiat shall in the mean time be issued out adjudging the sd (D.) to be a bkpt *Then* and in either of the sd cases this present indre and evy covt clause and agrt herein contd shall cease determine and be utterly void *Provided always* and it is hby furr agrd and decld by and betn all the sd pties hereto that it shall be lful to and for any of the sd crs of the sd (D.) who shall be willing and desirous to concur in the arrangement hby made for the liquidation and discharge of their debts but who cannot make it convenient psnlly to exte these prests by letter or any note in writing witht a formal power of atty to authorize and empower

No. CCCXLII.
Deed of.

Debtor and
surety covenant
to pay.

To pay —
shillings in the
pound.

Proviso as to
creditors not
concurring, &c.

That creditors
may execute
these presents
by attorney.

(a) Or say, "truly pay or cause to be pd unto the sd sevl pties hereto of the third pt the full and just sum of s. in the pound upon the whole of the sd debts when and so soon as these prests shall be tendered and delivered to him signed sealed and delivered by the sd crs And also that they the sd (D. and S.) shall and will pay or cause to be pd unto the sd pties hereto of the third part the further sum of s. in the pound within mths from the date of these prests And shall and will so soon as these prests shall be delivered to them or either of them signed and sealed by the sd sevl crs as afd sign and give to each of the sd crs their respive jt and promissory notes for the sd last mentd dividend of s. in the pound which sd notes shall be made to become due at the expiration of mths and mths."

(b) As to the effect of this proviso, see Pref. s. 3.

No. CCCXLII.
Deed of.

Creditors give
letter of licence,

and covenant to
give a release in
general.

Stipulation as to
securities.

any or. psn or psns whomsr as his or their agent on his her or their behalf to peruse and inspect these prests in the hands of the psn or psns with whom the exon thof may be intrusted And if approved of in the name of such cr or crs to sign and exte the same and aftwds to rece his her or their divds on their sd respive debts according to the provo hby made for the liquidation and paymt thof as such cr or crs would have been entitled to in case he she or they had been actually present and had themselves exted the same *And this Indre also Witnesseth* That in conson of the covts and agrts hnbefe resply made and entered into by the sd (*D.*) and (*S.*) for the discharge of the sevl debts in manner hnbefe provided for They the sd sevl crs pties hereto *Have* and evy of them *Hath* given and granted and by these prests *Do* and evy of them *Doth* give &c. as far as they resply and lfully may or can unto the sd (*D.*) full &c. (letter of licence, *see last precedent*) And the sevl crs pties hereto *Do* hby covt not to sue &c. And furr that if the sd (*D.* and *S.*) their exs ads or ass shall duly (*a*) observe keep and perform the sevl covts and agrts hnbefe on their pts resply contd Then they the sd sevl crs of the sd (*D.*) pties hereto shall and will if the same shall be required at the costs and chas of the sd (*D.*) his exs or ads exte and give to him or them a general release and discharge for their sd sevl and respive debts due and owing from the sd (*D.*) And (*b*) deliver up all bonds bills notes and or. secties for the same whether given by him or any surety or sureties for him *And moreover* that if the sd sevl crs or any of them or any of their exs ads or ass shall act conty to the true intent and meaning of these prests Then that this present letter of licence shall and may be pleaded in bar to such debt or debts and sums of money And to any prosecution suit or or. action that shall be brought agst the sd (*D.*)

(a) As to the strict performance of the covenants by a debtor, *see* Pref. s. 4.

(b) As to the necessity of this stipulation, *see* Pref. s. 5. If the contrary be intended, it must be stipulated in express terms, and then say, "*Provided always* and it is hby decld and agrd by and betn the sd pties to these prests that nothing herein contd shall extend to or be construed to extend to prevent the sd sevl crs their exs &c. (or, "the sd A. B. or C. D.," *as the case may be*) from commencing any action or actions suit or suits agst him the sd (*D.*) for recovering payment of the money which shall or may become due or paye to them the sd sevl crs resply upon or by virtue of any notes bills or or. secties which they may now hold agst the este of the sd (*D.*)"

his exs ads or ass on acct thof as effectually as if the sd (D.) No. CCCXLII.
 had a general rele under the hands and seals of such crs resply Deed of.
 for that purpe

In witness &c. see *ante*, No. XLVI.

—◆—
 No. CCCXLIII.

Another (short form.)

CCCXLIII.
*Deed of,
 (Short.)*

To all &c. We whose names and seals are hereunto subscribed and set crs of (*debtors*) of &c. send greeting *Whas* the sd (D.) are and do stand jtly indebted unto us the sd crs in divers sums of money which they are willing to pay and satisfy as far as they are able *Now know ye* That we the sd crs who have hereto subscribed our names and affixed our seals finding that the sd (D.) are by losses and orwise disabled to pay our full debts do severally and respively agree and bind ourselves our hrs exs and ads unto the sd (D.) by these prests to accept and take of them the sd (D.) their exs and ads after the rate of shillings in the pound in full satisfaction of all debts and sums of money which they jtly owe to us and evy of us resply the same to be paid in four equal paymts on the days following that is to say on the day of the day of the day of and the day of so as the sd (D.) for the more sure and better paymt of the sd sevl sums of money in satisfaction of our debts as afd their exs or ads do before the day of become jtly and severally bound with sufficient sureties unto us and evy of us resply by writing or obligation in due form of law to be made sealed and delivered to us each and evy of us and to each and evy of our use *Provided always* that neither these prests nor any thing hncontd shall bind us or any or either of us who have hereunto subscribed our names and put our seals unless all and ey of the crs afd shall have sealed and exted the same on or before the day of next ensuing

In witness &c.

No.
CCCXLIV.
Deed of
(Bankruptcy.)

No. CCCXLIV.

*Deed of Composition between a Debtor and his Creditors, where
a Fiat of Bankruptcy has been issued against the Debtor.*

Obs. As to the provision in the 6 G. 4 for this case, see Pref.
sect. 6.

Recitals of debts
due to creditors.

*This Indre made &c. (see No. LXXXV) Betn (assignees) of
&c. assignees duly chosen under a fiat of bankruptcy issued
agst (debtor) of &c. of the first pt the sd (debtor) and (surety) of
&c. of the second pt (creditors) the sevl or. psns whose names
and seals are hereunto subscribed and affixed as creditors or
agents or atties of crs of the sd (D.) of the third pt and (trustee)
of &c. a trustee named by and on behalf of the sd sevl psns
pties hereto of the first and third pts for the purps hnaft mentd
of the fourth pt* *Whas (recite fiat of bankruptcy and appoint-
ment of assignees, see ante, No. CCXXVII.) And whas the sd
(D.) at the time of his becoming bankrupt as afd was and stood
justly and truly indebted to the sd (A.) and the sevl or. psns
pties hereto of the third pt in the sevl sums of money set oppo-
site to their respive names and some of the sd debts and sums
of money are due and secured by certain bills of exchange and
promissory notes as in the sevl schedules hereunder-written or
hereunto annexed are more parlarly mentd and described* *And
whas the sd (A.) and (C.) having taken into conson the insolvent
state of the sd (D.'s) affairs have agd to accept and rece the
divd of s. in the pound on condition that the paymt thereof
shall be secured by bills to be drawn by the sd (D.) upon and
accepted by the sd (S.) which sd bills are more parlarly de-
scribed in the schedule hereunder-written or hereunto annexed
marked with the letter C* *And they the sd (creditors) have also
agrd with the sd (D.) that upon delivery of the sd bills they the
sd (C.) will deposit with the sd (T.) all promissory notes of the
sd (D.) and all bills drawn by the sd (C.) upon and accepted
by the sd (D.) and given to them to secure their sevl and respive
debts which they have indorsed and negotiated save and except
such bills as they hold of indorsees agst which they have agd
to indemnify the sd (D.) his exs and ads all which sevl bills are
more parlarly described in the schedule hereunder-written marked*

with the letters A and B *And whas* the sd (*D.*) hath on the day of these prests delivered the sd bills drawn by him the sd (*D.*) upon and accepted by the sd (*S.*) as afd and the sd (*C.*) have deposited the hnbefe mentd bills with the sd (*T.*) for the purps and in manner hnaft^r mentd *Now this Indre witnesseth* That in pursuance of the sd agrt and in conson of the preses He the sd (*D.*) for himself his hrs &c. doth hby covt &c. with and to the sd crs pties hereto of the first and third pts that he the sd (*D.*) or the sd (*S.*) or one of them shall and will well and truly pay the sevl bills of exchange at or on the sevl days or times in the sd schedule marked C mentd for payment thof and according to the purport tenor and effect of the sd sevl bills And the sd (*A.*) and the sevl or. crs pties hereto and exting these prests for themselves sevlly and for their sevl and respive hrs exs and ads and not the one for the or. or ors of them or the acts deeds or defts of the or. or ors of them but evy of them for himself or herself his or her own hrs exs and ads acts deeds and defts do and each of them doth hby covt &c. with the sd (*D.*) his exs and ads that they the sd (*A.*) and (*C.*) shall and will accept and take the afd bills of exchange by way of composition and paymt of *s.* in the pound upon the amount of their sevl and respive debts and in full discharge of the sd (*D.*) And shall and will immly join in any petition or or. application to the Court of Chancery for rescinding the fiat of bankruptcy issued agst the sd (*D.*) as afd *And this Indre furr witnesseth* That in furr pursuance of the sd agrt and in conson of ten shillings to the sd (*A.*) in &c. pd by the sd (*D.*) the rect &c. They the sd (*A.*) as such assignees as afd at the request and by and with the consent and direction of the sd sevl or. crs pties hereto of the third pt testified by their sevlly and resply signing sealing and delivering these prests And also they the sd sevl or. crs pties hereto of the third pt *Have* and each of them *Hath* bargained sold assigned transferred and set over and by these prests *Do* and each of them *Doth* &c. bargain &c. unto the sd (*D.*) *All* and singr the stock in trade household goods plate china linen and furniture book-debts and or. debts and sums of money due owing or belonging to him the sd (*D.*) from any psn or psns whomsr and all or. the este and effects of the sd (*D.*) vested in the sd (*A.*) as assignees of the sd (*D.*) as afd and all powers

No.
CCCXLIV.
Deed of,
(Bankruptcy).

Covenant from
debtor to pay
bills.

Covenants from
creditors.

Assignment of
goods &c. by
the assignees to
the debitor.

No.
CCCXLIV.
Deed of,
(Bankruptcy).

Release to
debtor.

Indemnity to
debtor against
bills.

and remedies and means of suing for receiving and recovering the sd hby assd debts and preses and all or. powers incident thereto and all the este right title int trust property bent claim and demand whatsr both at law and in equity of them the sd (A.) as such assignees of the sd (D.) as afd and of all or. the crs pties hereto of into and out of the preses or any pt thof *To Have Hold* rece take and enjoy the sd stock in trade household goods plate china linen and furniture debts sum and sums of money and all and singr or. the preses hby assd or intended so to be with the apts unto the sd (D.) his exs ads and ass as his and their own proper goods chattels and effects for ever *And this Indre furr witnesseth* That in furr pursuance of the sd in pt recited agrt and in conson of the preses they the sd (A.) and the sevl or. crs pties hereto *Have* and each of them *Hath* remised released and for ever quitted claim and by these prests *Do* and each of them *Doth* remise &c. unto the sd (D.) his hrs exs and ads all and all manner of action or actions suit or suits sum and sums of money judgments exons trespasses claims and demands both at law and in equity which they the sd sevl psns pties hereto of the first and third pts or any of them their hrs exs ads ptners or ass shall or may have or orwise might hrafr have claim challenge or demand agst the sd (D.) his exs or ads or their or any of their este or effects for or by reason or means of any matter cause or thing whatsr in respect or on acct of the debt or debts to them or any of them resply due and owing from the sd (D.) as afd from the beginning of the world to the date of these presents *And* they the sd sevl crs pties hereto do hby furr covt &c. with and to the sd (D.) his exs and ads to indemnify defend and keep harmless him the sd (D.) his exs and ads and his and their este and effects of and from all actions suits troubles attachments costs chas dams exps claims and demands whatsr which he or they shall or may at any time or times hrafr sustain or be liable or put unto for or by reason or on acct of the nonpaymt of all or any of the sd bills of exchange which in the schedule hereunder written or hereunto annexed marked letter B are more parlarly described *And furr* That it shall and may be lful to and for the sd (D.) his exs and ads at any time or times hrafr in case the covts and agrts herein contd on his pt and behalf shall be duly performed but not orwise to plead these prests in

bar &c. (see *Deed of Inspection*) *Provided always* and it is hby decl'd and agr'd that these prests shall not extend nor be deemed or construed to extend to rele and discharge him the sd (D.) his exs or ads from any bill or bills notes acceptances or indorsements of the sd (D.) held by any or either of the sd sevl psns pties hereto of the first and third pts or. than those mentd and described in the sd sevl schedules marked A and B but that in case the same shall not be duly pd by the psn or psns accepting the same the sd (D.) shall still remain liable for and subject to the paymt thof And it is hby furr decl'd and agr'd by and betn the pties to these prests and parlarly the sd (T.) doth hby covt &c. with the sd sevl pties to these prests that he the sd (T.) shall and will stand possessed of the sd bills of exchange and promissory notes mentd in the schedule marked A and which have been so on the day of the date of these prests delivered to and deposited with the sd (T.) as afd upon the trusts and to and for the intents and purps hnaft expsd and decl'd of and concerning the same that is to say *Upon Trust* that if all the acceptances of the sd surety so given as afd are duly pd when and as they shall resp'y become due and paye the same having been lfully demanded Then and in evy such case that he the sd (T.) his exs ads or ass shall and will forthwith deliver the sd bills and notes so deposited as afd to the sd (D) his exs or ads And upon this furr trust that if any or either of the sd acceptances of the sd (S.) so given as afd shall not be pd when and as they shall resp'y become due and paye the same having been lfully demanded Then and in evy such case that he the sd (T.) his exs ads or ass shall forthwith deliver the sd notes and bills so deposited as afd to the pty or pties who shall have deposited the same with him and being the holder of the acceptance of the sd (S.) so dishonoured as afd *Provided always* nevss that if all or any of the sd bills or acceptances of the sd (D.) and (S.) so given as afd and mentioned and described in the sd schedule marked letter C shall not be pd when and as they become due and paye the same having been lfully demanded Then and in such case the sd rele and evy clause therein contd as to or agst the psn or psns to whom such def't shall be made shall be utterly void and of no effect but otherwise shall remain and continue in full force *In witness &c. see ante, No. XLVI.*

No.
CCCXLIV.
Deed of,
(*Bankruptcy*).

Proviso as to
bills given by
debtor and
surety.

Proviso as to
bills in the
hands of trustees.

No. CCCXLIV.
Deed of,
(Bankruptcy).

Schedules of Bills.

- A—Bills deposited with the trustee.
 B—Bills not deposited, but against which creditors indemnify.
 C—Bills given for the composition of s. in the pound.



No. CCCXLV.
Letter of
Licence.

No. CCCXLV.

Letter of Licence from Creditors to a Debtor.

Obs. As to the effect of such a deed, see Pref. sect. 7; and as to the stamp, see sect. 11.

To all to whom these Presents shall come We whose names and seals are hereunto set and affixed respive crs of (*debtor*) of &c. send greeting *Whas* the sd (*D.*) is indebted to us the sd crs in divers sums of money which he is at present unable to pay witht making sale of his este and effects to the great prejudice of his trade *And whas* being satisfied of the integrity of the sd (*D.*) and the solvency of his affairs we have agrd to allow him the space of to enable him to pay the sd debts *Now know ye* That we the sd sevl crs of the sd (*D.*) sevlly and resply and for our sevl and respive hrs exs ads ptnrs and ass but not for each or. or for the hrs exs ads ptnrs or ass of each or. *Have* at the request of the sd (*D.*) given and granted and by these prests *Do* give and grant unto him the sd (*D.*) free and full licence liberty and authy to attend follow carry on conduct and manage his sd trade and business and to transact and attend to all and evy his affairs matters and things whatsr at any place or places within the United Kingdom of Great Britain and Ireland at his free will and pleasure and witht any let suit action arrest attachment or or. impediment or molestation to be offered or done unto him his goods chattels mos or or. effects whatsr by us or any of us or our respive hrs ads ptnrs or ass or by our or their means or procurement for and during the space of mths next after the day of the date hereof if the sd (*D.*) shd so long live *And furr* that we the sd (*C.*) shall not nor will sue arrest attach or prosecute the sd (*D.*) his exs or ads for on acct of our or any or either of our debts or demands whatsr *And*

moreover that if any such action arrest attachment or prosecution afd be prosecuted or commenced agst the sd (*D.*) either in his psn goods or chattels within the sd term or period by us or any of us or by any or. psn or psns by or through our or either of our procurement or consent contrary to the true intent and meaning of these prests Then the sd (*D.*) by virtue hereof shall be henceforth and for ever acquitted exonerated and discharged of and from all and evy the debts claims and demands whatsr of such of us the sd crs our respive hrs exs ads ptnrs or ass by whom or by whose order means or procurement he the sd (*D.*) his goods chattels mos estes or effects shall be so arrested imprisoned attached or damnified and this present letter of licence in any or either of the sd cases shall be and operate as a rele and may be pleaded in bar to the same debts claims and demands and to evy such action attachment arrest prosecution or process as afd *In witness &c.* see *ante*, No. XLVI.

No. CCCXLV.
*Letter of
Licence.*

A. B. (L. s.)

C. D. (L. s.)

E. F. &c. (L. s.)

No. CCCXLVI.

No. CCCXLVI.
Release.

Release from Creditors to a Debtor under a Composition.

As to stamp, see Pref. sect. 11.

To all &c. (see *last Precedent*) We &c. creditors of (*debtor*) Recital.
of &c. send greeting *Whas* the sd (*D.*) being unable to pay and satisfy the whole of our respive demands hath proposed to pay to us his sevl crs the sum of shillings in the pound upon the amount of our respive debts being the sums set opposite to our respive names which we do hby declare to be the full amount of our respive demands agst him the sd (*D.*) his este and effects And we the sd crs have consented to accept such composition in full discharge of our respive demands and to exte such rele as is hnafr mentd and contd *And whas* we the sd sevl psns whose names are hereunder written have resply recd the sevl sums of money set opposite to our respive signatures

Now therefore know ye that for the conson afd we the sd sevl Release.
crs *Do* and each of us who have hereunto set our hands and

No. CCCLXVI. *Release.* seals *Doth* by these prests remise release and for ever discharge the sd (*D.*) his hrs exs and ads and their and each of their lds goods and chattels of and from and agst all debts claims and demands whatsr as agst him the sd (*D.*) which we ever had or could claim or demand and also of and from all and singr the covts condons and agrts and also all actions and suits and causes of action and suit which we now have or ever had or can or may have agst the sd (*D.*) his exs ads or ass in respect of our sd debts or any or. matter cause or thing whatsr concerning the same from the beginning of the world to the day of the date hereof *In witness &c.* see *ante*, No. XLVI.

Debt Signature Seal Composition



No.
CCCXLVII.
Release.

No. CCCXLVII.

*Indenture of Release from Two Creditors to One of
Two Partners.*

Obs. As to the effect of a release to one partner, see Pref. sect. 8.

This Indre made &c. see *ante*, No. LXXXV. Betn (*releasors*) of &c. and (*releasee*) of &c. of the or. pt *Whas* the sd (*releasee*) carried on the trade or business of a merchant in partnership with I. F. of &c. under the firm of F. and E. *And whas* there were various transactions betn the sd (*releasors*) and the sd F. and E. and the sd F. and E. having become embarrassed in their affairs stopped paymt and upon the balance of accts betn the sd F. and E. and the sd (*releasors*) the sd F. and E. stood indebted unto the sd (*releasors*) in a considerable sum of money *And whas* the sd E. lately offered and proposed to the sd (*releasors*) to pay to them the sum of £ if the sd (*releasors*) would give and exte unto the sd E. a rele or discharge for or in respect of the afd debt or demand on the sd F. and E. and they agrd to give such discharge subject to the provos and restrictions hnafr contd *Now this Indre witnesseth* That in conson of the sum of £ to the sd (*releasors*) in &c. pd by the sd (*releasee*) at &c. the rect &c. And also in conson of promissory notes given and made paye to the sd (*releasors*) their exs ads or ass the rect of which sd notes (making togr with the sum of £ so pd as

afid the sum of £) they the sd (*releasors*) do hby resply
acknge And pursuant to and in exon of the sd agrt They the sd
(*releasors*) *Have* and each of them *Hath* remised reld and dis-
charged and by these prests *do* and each of them *doth* remise
&c. (see *last Precedent*) *Provided nevss* and it is hby decld and
agrd by and betn the parties to these prests and the true intent
and meaning of them and of these prests or any matter or thing
herein contained shall not rele or be construed to rele or in any
manner to prejudice or affect any claim or demand which the sd
(*releasors*) or either of them have or ever had or which they or
either of them or either of their exs ads or ass hrafr shall can or
may have upon or agst the sd F. or upon or agst the jt estate or
effects of the sd F. and E. in respect of the debts so due from the
sd F. and E. or any pt of such jt estate or effects whether the
same shall be in the hands of or recoverable from F. and E. or
either of them or from any or. psn or psns whomsr *And* that
it shall and may be lful for the sd (*releasors*) their exs ads and
ass from time to time when and as they shall be thereto advised
to commence and prosecute any actions suits or or. proceeding
either at law or in equity agst the sd E. jtly with the sd F. or
agst the sd E. his exs ads or ass separately for the purpe of re-
covering or compelling or of enabling the sd (*releasors*) their
exs ads or ass to recover or compel paymt or satisfaction of the
debt so due and owing from the sd F. and E. to the sd (*releasors*)
as afid either by or out of the jt este of the sd F. and E. or by or
from the sd F. his exs ads or ass or his separate este and effects
Provided always and it is hby furr decld and agrd by and betn
the pties to these prests and it is the true intent and meaning of
them and of these prests that in case deft shall be made in the
due paymt of any two of the before mentd promissory notes
successively to fall due in such manner that any two of the
promissory notes shall be due and unpaid at the same time
Then and in such case these prests and evy matter or thing
herein contd shall from and immly after such deft be absolutely
void and of no effect And the sd sum of £ and all and evy
or. sum or sums of money which may at any time be pd in
discharge of any of the sd promissory notes shall be carried to
the acct of the sd F. and E. with the sd (*releasors*) and all the
debts claims and demands of the sd (*releasors*) their exs ads and

No.
CCCXLVII.
Release.

Proviso that
creditors may
sue the partners.

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Release.

ass by reason or in respect of the debt hnbefe mentd to be due to them from the sd F. and E. either upon or agst F. and E. jly or separately their or either of their exs or ads shall from and immly after such debt be in full force and virtue as to so much of the debt so due to the sd (*releasors*) as afd as shall remain unpd in like manner to all intents and purps as if these prests had not been made anything herein contd to the contrary thereof in anywise notwithstanding *In witness &c. see ante*, No. LXVI.

No.
CCCLXVIII.

No. CCCXLVIII.

Memorandum indorsed on the above Deed of Release.

This deed is deposited by the within-named (*releasors*) and by G. B. of &c. on the pt of the within-named (*releasee*) with E. L. of &c. who is to deliver it to (*releasee*) his exs or ads or to his or their order after due paymt of the within mentd promissory notes according to the tenor and meaning of the within-written indre of rele but in case of any debt in paymt of the promissory notes or any of them according to the tenor and meaning of the within-written indre E. L. is to deliver up the indre to the sd (*releasors*) their exs or ads to be cancelled In the mean time the indre is to remain in the hands of the sd E. L. for the purps afd.

CONVEYANCES IN TRUST FOR CREDITORS.

- | | |
|--|--|
| 1. <i>Validity of Deed or otherwise.</i> | 5. <i>Receipts of Trustees, valid Dis-</i> |
| 2. <i>Power of Sale to Survivors.</i> | charges. |
| 3. <i>Delegating Trust.</i> | 6. <i>Liability of Purchaser.</i> |
| 4. <i>Power to sell or mortgage.</i> | |

Validity of deed
or otherwise.

SECT. 1. A conveyance for the payment of debts generally, to which no creditor is a party, and in which no particular debts are expressed, has been held to be a fraudulent conveyance within the 27 El. c. 4, as against a purchaser for valuable consideration, *Leech v. Leech*, 1 Chan. Ca. 249; but where a debtor between judgment and

execution made an assignment of all his effects to trustees for the benefit of all his creditors, this was held not to be fraudulent and void under the 13 El. c. 5, although not signed by any of the creditors, see *Pickstock v. Lyster*, 3 M. & S. 371; see further Dig. p. ii. tit. FRAUDS (FRAUDULENT CONVEYANCES).

Conveyances in Trust for Creditors.

2. A power of sale given to two or more trustees will not survive, unless it be expressly so stipulated by the deed, *Townsend v. Wilson*, 3 Madd. 261; S. C. 1 B. & A. 608.

Power of sale to survivors.

3. As trustees cannot delegate their power, it may be sometimes prudent to give them express authority to that effect.

Delegating trust.

4. As it is doubtful whether, under a trust to raise money by sale or mortgage, the trustees having mortgaged can afterwards sell to pay off that mortgage, *Palk v. Lord Clinton*, 12 Ves. 48; it may be proper to provide for this event in the deed.

Power to sell or mortgage.

5. Under the usual clause, that the receipts of trustees shall be valid discharges, it is necessary for all the trustees to join in the discharge: where a trustee has only released to his co-trustee, and not absolutely renounced his trust, it has been held, that his signature is necessary to make a valid discharge, *Crew v. Dicken*, 4 Ves. 97.

Receipts of trustees valid discharges.

6. Where an estate is to be sold for the payment of debts generally, the purchaser is not bound to see to the application of the purchase-money; but where the debts are scheduled, he is bound so to do, unless the deed, from the terms of it, exonerates him, *Dunch v. Kent*, 1 Vern. 260; *Spalding v. Shalmer*, ib. 303; *Binks v. Lord Rokeby*, 2 Madd. 227. See further, *Obs. next precedent*.

Liability of purchaser.

No. CCCXLIX.

Conveyance of Freeholds in Trust for Creditors where the Debtor is a Trader (General Precedent).

No.
CCCXLIX.
Conveyance in Trust for Creditors.

This Indre made the &c. see *ante*, No. LXXXV. Betn (*debtor*) of &c. (*a*) of the one pt (*trustees*) of &c. creditors of the sd (*D.*) and trustees named and apptd on behalf of themselves and the or. crs of the sd (*D.*) for the purps hrafter mentd of the or. pt *Whas* (*recite seisin*, see BANKRUPTCY) (*b*) *And whas* the

(*a*) If the debtor is possessed of an estate in right of his wife, or is tenant in tail, as to parties see FINES AND RECOVERIES.

(*b*) If the debtor be tenant in tail, recite seisin, see BANKRUPTCY. Also the consent or otherwise of the protector, see FINES AND RECOVERIES. If it be an

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Testatum.

Habendum.

Power to sell
or mortgage.

sd (D.) is and stands justly indebted to various psns in divers sums of money on or or. secties which he is desirous of discharging and hath agreed for the more speedy paymt thof to convey the sevl lds and heredts hnaft described to the sd (*trustees*) in trust to sell *Now this Indre witnesseth* that in pursuance of the sd agrt and for and in conson of 5s. &c. He the sd (D.) (a) Hath granted bargained sold aliened and reld and by these presents Doth &c. grant &c. *All those* messes &c. togr with all houses &c. [all which messes &c. are in the actual posson &c. but see *post*, RELEASE (CONVEYANCE)] And the revn &c. And all the este &c. of him the sd (D.) in to &c. [togr with all deeds &c. see RELEASE (CONVEYANCE)] *To Have and to Hold* the sd messes lds and heredts and all and singr or. the preses hby granted and reld or intended so to be unto the sd (*trustees*) their hrs and ass for ever (b) but nevss upon the trusts and to and for the ends intents and purps and under and subject to the powers provos declons and agrts hnaft decld or exprssd concerning the same (c) that is to say *Upon Trust* that they the sd (T.) or the survors (d) or survivor of them or the hrs exs or ads of such survivor or any atty (a) or atties

appointment under a power, recite the deed creating the power, see *ante*, APPOINTMENTS. And if the debtor took the estate to himself and a trustee, to prevent dower, see *post*, RECITALS.

(a) If it be an appointment under a power, say "by virtue and in pursuance of the powers authties and limitations in the sd in pt recited indre contd and in exercise of all or. powers in him vested to him given or him in anywise enabling in this behalf *Hath* directed limited and appointed and by this present deed or writing by him the sd (D.) signed sealed and delivered in the presence of and attested by the two credible witnesses whose names are intended to be hereupon written or indorsed as witnesses to the exon thof by the sd (D.) doth direct limit and appt That all &c. (*describe parcels*) togr with all houses &c. see *post*, RELEASE (CONVEYANCE) and the revn &c. shall henceforth be and remain to the use of the sd (T.) their hrs and ass for ever but nevss upon the trusts &c. *And this Indre furr witnesseth* That for the consons afd and also in conson of 5s. to the sd (D.) [*or, if there be a dower trustee, to the sd (D. and T.) by the sd (T.)*] in &c. pd the rect &c. He the sd (D.) *Hath* [*or, 'they the sd D. and T. Have and each of them Hath'*] granted bargained &c." (see *above*).

(b) If the debtor be tenant in tail, and there be no protector, it may be sufficient to say, "freed and absolutely discharged from all estes tail." As to the declaration to bar dower, see DOWER, and FINES AND RECOVERIES.

(c) If there be copyholds, then add, by a further testatum, a covenant to surrender, see CONVEYANCE IN TRUST TO SELL.

(d) As to the necessity of the words "survivors &c." see sect. 2.

(e) As to the propriety of this clause, see sect. 3.

by them or him duly authorized do and shall witht any further or or. consent and concurrence of the sd (*D.*) his hrs exs or ads immly or at any time or times after the sealing and delivery of these prests make sale or mortgage of all the sd messes and tents lds heredts and preses hby granted and reld or orwise assured or intended so to be or any of them or any pt or pts thof as they shall think fit either togr and in one lot or pcl or in separate lots and pcls and either by public sale or private contract or ptly by public sale and ptly by private contract and for such price or prices sum or sums of money as the sd (*T.*) or the survors &c. shall think fit with full power to buy in all or any pt of the sd herdts and preses which shall have been put up to sale by public auction and to resell or offer them again to sale in all or any of the modes afd witht being liable in any of the sd cases to answer for any loss or diminution in price which may happen thby and also to mortgage the sd heredts and preses or any of them or any pt thof and at any time thereafr to sell and absolutely dispose of the heredts so mtged (*a*) or any pt thof either subject to the sd mtges or discharged therefrom *And also* with like power and authty to convey and assure to any psn or psns who shall become the purchaser or purchasers mortgagee or mortgagees of the sd messes or any pt thof in such manner and form as he or they shall direct or appt *And* in the mean time and until such sale or or. disposition shall be made and as to such parts as remain unsold or undisposed of *Upon Trust* that they the sd (*T.*) or the survor &c. do and shall enter into and upon all and singr the same heredts and preses and rece and take the rents issues and growing proceeds and also all arrears of rent and all and evy sum and sums of money which are now due to the sd (*D.*) from all and evy the lessee or lessees of the sd (*D.*) (*b*) *And* it is hby decl'd and agreed by and betn the pties hereto that all contracts agrts mtges sales dispositions and conveyances acts deeds matters and things whatsr which shall or may be entered into made done or exted by the sd (*T.*) or the survors &c. shall be as valid as if he the sd (*D.*) had joined

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To receive rents
until sale.

Contracts entered
into by
trustees to be
valid.

(*a*) As to the propriety of this latter clause, see sect. 4.

(*b*) If there be arrears of rent, add, if necessary, an assignment of the rent by a further testatum and a power of attorney, see CONVEYANCE IN TRUST TO SELL.

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Trustees' re-
ceipts to be
valid discharges.

Declaration of
trusts.

or concurred in the same and that the psn or psns to whom the sd heredit and preses or any pt thof shall or may be conveyed shall have hold and enjoy the same agst the sd (*D.*) his exs and ads and all and evy or. psn or psns lfully claiming or possessing any este right or title from through or under him *And (a)* it is hby furr agrd and decld by and betn the sd pties hereto so far as they are resply interested or concerned that the rect and rects of the sd (*T.*) or the survors &c. shall be a good discharge and good discharges to any purchaser or purchasers mortgagee or mortgagees lessee or lessees or any of them for so much as shall be therein expssd or ackngd to be recd And that all psns paying the same shall not aftwds be answe or accountable for the loss misapplication or nonapplication thof or of any pt thof *And it* is hby furr decld and agrd that the sd (*T.*) and the survors &c. shall stand possessed of and be interested in all and evy the sum and sums of money which shall or may arise or come to their hands by any sale or disposition and out of the rents issues or or. proceeds thof Upon the sevl trusts and to and for the sevl ends intents and purps and under and subject to the sevl provos restrictions declons and agrts which are (*b*) decld contd and expssd of or concerning the same in or by a certain indre bearing even date with these prests and made betn the sd (*D.*) of the first pt the sd (*T.*) of the second pt and the sevl or. psns therein named as crs of the sd (*D.*) of the third pt (*c*) And the

(*a*) As to the necessity of this clause, see sect. 5, 6.

(*b*) Where the trusts are declared in the same deed, see CONVEYANCE IN TRUST TO SELL, and also ASSIGNMENTS IN TRUST.

(*c*) If necessary, add "And the sd (*D.*) doth hby for himself and his hrs declare and direct that immediately upon the exon of these prests and until the trusts hnbefe referred to shall have been fully exted all the este right title and int of him the sd (*D.*) in and to the sd heredit and preses hby granted and reld or orwise assured or intended so to be and also the rents issues and growing proceeds thof until the same shall be sold or disposed of upon the trusts hnbefe contd shall as and betn the psnl reptives of him the sd (*D.*) be considered as and in the nature of psnl este and belong and go to his exs and ads Subject to the trusts afd in preference to and exclusion of his hrs at law although no sale thof shall have been made during the lifetime of him the sd (*D.*)" This provision, so far as regards creditors, appears to be now rendered unnecessary by the 3 & 4 W. 4, c. 104, which makes real property assets for the payment of debts, see APPENDIX.

Where there is a dower trustee, he must first covenant that he has done no

sd (*D.*) for himself his hrs exs and ads doth hby covt with and to the sd (*T.*) their hrs exs and ads in manner following &c. That for and notwithstanding any act &c. heretofore made &c. by the sd (*D.*) he the sd (*D.*) is seised &c. see RELEASE (CONVEYANCE) without any manner of condon limitation &c. which can or may revoke &c. or prejudicially affect the same in any manner howsr [leases and agrts for leases of which counterparts have been produced unto the sd trustees excepted] *And also* for and notwithstanding &c. he the sd (*D.*) has good right to convey unto the sd trustees &c. *And furr* that until the sd trust preses shall resply be sold or disposed of in pursuance of the trusts hnbefe decl'd for that purpe the same and evy pt thof shall be and remain to the uses upon the trusts and for the ends intents and purps hnbefe decl'd of and concerning the same and be holden and enjoyed and the rents issues and prfts thof reed taken and applied accly And from and immly after any such sale and disposition shall be made and conveyances exted thof it shall be lful for the purchaser or purchasers mortgagee or mortgagees his or their hrs exs ads or ass from time to time and at all times thereafter peaceably and quietly to enter into and upon and hold possess and enjoy all and singr the same hereds and preses with their respive rights members and apts to and for his and their own use and bent *And* that free and clear &c. and absolutely discharged and exonerated or orwise by and at the expence of the sd (*D.*) his hrs exs and ads effectually defended protected and indemnified of from and agst &c. see RELEASE (CONVEYANCE) *And furr* that neither he nor any or. psns lfully claiming or to claim by from or under him shall or will at any time hrafr make do exte commit or willingly suffer any act matter or thing whby or by reason whereof the exon or performance of the trusts hby expssd or decl'd shall or may be defeated prevented or hindered from taking effect according to the true intent and meaning of these prests nor revoke or make void any of the powers or authties hereby given or which shall or may hrafr be given to the sd (*T.*) nor rece discharge compound sue for or inter-

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Covenant for
title.

Seised in fee.

Good right to
convey.

Quiet enjoy-
ment.

Free from in-
cumbrances.

Nor revoke
powers.

act to incumber; and afterwards join with the debtor in the other covenants, see *post*, PURCHASE, and INDEX to THE PRECEDENTS.

As to the variations, where the wife is a party, or the debtor is tenant in tail, see FINES AND RECOVERIES, and INDEX.

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meddle with any of the rents issues or prfts nor disavow nor discontinue or become nonsuit in any action or suit to be brought in respect thof nor act or interfere in or about the preses afd or any of them orwise than the sd (*T.*) or the trustee or trustees for the time being shall require concerning the same And that all and singr the sd heredts and preses and all or. the este and effects of the sd (*D.*) shall be holden and enjoyed by the sd (*T.*) or the trustee or trustees for the time being witht the let suit interruption or disturbance of the sd (*D.*) his exs or ads or any or. psn or psns claiming or to claim by from through under or in trust for him or them *And furr* that he the sd (*D.*) his hrs exs or ads shall and will at all times at the request of the sd trustee or trustees for the time being be aiding and assisting him or them in the trusts afd and shall and will satisfy and confirm all and whatsr they or any of them shall lfully do or cause to be done in or about the same *And lastly* that he the sd (*D.*) his exs ads and ass and all and evy or. psn or psns rightfully claiming or possessing any este right title charge or int at law or in equity in to out of upon or respecting the heredts and preses hby granted and reld or orwise assured or intended so to be or any pt thof from through under or in trust for him them or either of them [or. than psns claiming or intituled under or by virtue of such leases or agrts as afd] shall and will from time to time upon evy reasone request of the sd trustee or trustees for the time being but at the proper costs and chas of the sd (*D.*) his exs or ads make do exte and perform all and evy such furr and or. acts deeds matters and things as shall be necessary for the furr better more perfectly and satisfactorily granting releasing confirming and assuring the same heredts and preses and evy and any pt thof with their respive rights members and apts unto and to the use of the sd (*T.*) their hrs and ass upon and for the trusts ends intents and purps hnbefe expssd and decl'd of and concerning the same in such manner and form as they the sd (*T.*) or the trustee or trustees for the time being or the purchaser or purchasers or mortgagee or mortgagees his or their counsel in the law shall reasonably devise advise or require *Provided always* nevss that the concurrence or assent of him the sd (*D.*) his hrs or exs &c. in or to any conveyance assignment or assurance to any purchaser or mtgee or or. psn to whom

Trust deed.

the same heredit and preses or any pt thof shall be sold or disposed of or intended so to be conveyed or assured shall not in anywise be deemed requisite to give effect to the same (a) *In witness &c.* see *ante*, No. XLVI.

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No. CCCL.

A Trust Deed for the Benefit of Creditors, to accompany a Deed of Conveyance or Assignment. (General Precedent.)

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Trust Deed.

Obs. 1. As to the effect of this deed, see Pref. COMPOSITION, sect. 10, and Pref. *last Precedent*; and as to the stamp, see Pref. COMPOSITION, sect. 11.

2. Trustees are not chargeable for the acts or receipts of one another; and although there are not negative words in a deed to that effect, yet courts of equity will not make them liable; but if they will bind themselves, the court will not relieve them, especially in a case of composition of debts, *Leigh v. Barry*, 3 Atk. 582.

Liability of
trustees.

3. Although trustees are intitled to all fair allowances for what they have actually expended, yet the usual clause for reimbursement is very necessary, particularly when the *cestuique* trust aliens the estate, *Trott v. Dawson*, 1 P. Wms. 779; 7 B. P. C. 266.

Reimbursement
to trustees.

This Indre made &c. (see *ante*, No. LXXXV.) Betn (*debtors*) of &c. bankers and coptnrs of the first pt (*trustees*) of &c. of the second pt and the sevl persons creditors of the sd (*D.*) whose names and seals are hereunto set and affixed of the third pt *Whas* the sd (*D.*) lately carried on the business of bankers as afd under the firm of &c. *And whas* the sd (*D.*) became and now are indebted on their sd ptnship acct unto the sd sevl psns pties to these prests of the third pt in several sums of money or engagements to replace Bk stock or or. property And the sd (*D.*) are also sevlly indebted on their own private and separate acct unto some of the sd sevl psns who are or are intended to be pties to these prests And the sd (*D.*) being unable at present to pay and discharge the full amount of the debts owing by them as afd it was lately proposed and agrd by and betn all the

Recital of busi-
ness carried on
in partnership.

Of carrying on
business.

(a) Where the debtor is a tenant in tail, and there is an unconsenting protector, a covenant to perfect title must be added, see *post*, FINES AND RECOVERIES. If the debtor be a tenant for life, or it be necessary on any account to insure his life, add a covenant to that effect, see *ante*, ANNUITY.

No. CCCL. <i>Trust Deed.</i>	<p>pties hereto that the sd (<i>D.</i>) shd convey and assign all the este and effects belonging to them on acct of their sd ptnship and also that each of them shd convey assign and transfer all the este and effects belonging to him as his separate property to the sd (<i>T.</i>) their hrs exs ads or ass <i>In Trust</i> and for the purps hnafr mentd <i>And whas</i> by indres of lease and release (or “bargain and sale”) and assnment bearing even date with these prests and made &c. the freehd copyhd leasehd and psnl este of the sd (<i>D.</i>) jtly and severally have been conveyed assigned and covtd to be surrendered by them unto and to the use of the sd (<i>T.</i>) their hrs exs ads or ass <i>In Trust</i> nevss to make sale of the same under the powers in the now reciting indres contd and to pay apply and dispose of the produce of such sale upon the trusts and to and for the ends intents and purps hereby referred to being the same trusts ends intents and purps decld and contd in these prests <i>Now</i> &c. That in pursuance of the sd agrt and for carrying the same into effect the sd pties to these prests do hby declare it to be the true intent and meaning of them and these prests that the sd (<i>T.</i>) and the survors and survivor of them and the exs ads and ass of such survivor shall stand and be possessed of and interested in all and singr the mos to arise by such sale of the sd freehd copyhd leasehd and psnl este and effects of the sd (<i>D.</i>) conveyed and assd to them the sd (<i>T.</i>) their hrs &c. as hnbefe mentd and also of and in the rents of the sd freehd &c. este in the mean time until such sale thof <i>Upon the Trusts</i> and for the intents and purps hnafr decld of and concerning the same that is to say <i>Upon Trust</i> that they the sd (<i>T.</i>) or the survors or survivor of them or the exs ads or ass of such survivor do and shall in the first place deduct retain and reimburse to himself and themselves all usual outgoings for rent taxes repairs salaries of clks and agents and all such or. costs chas and exps as he and they resply shall or may pay incur or be put unto in the exon of the trusts by these prests resply and by the sd indres of lease and release (or “of bargain and sale”) and assnmt reposed in him and them <i>And</i> in the next place do and shall apply the clear residue of the produce of the separate este of each of them the sd (<i>D.</i>) resply or a competent pt thof in paymt of the debts owing by him separately to such of the crs as have exted or shall exte these prests or their respive</p>
Of conveyance to trustees.	
Testatum.	
Declaration of trusts.	
To pay rent, taxes, salaries &c.	
To apply sepa- rate estate to the payment of se- parate debts.	

exs ads ass agents or atties and in proportion to the amount of the debts owing them resply witht any priority or preference until each of the sd crs resply or his or her exs &c. shall have received the full amount of the debts owing to him her or them and do and shall apply the residue or surplus (if any) of the produce of the separate este of each of them the sd (D.) in aid of the ptship fund for the paymt of the ptship debts until each of the sd ptship crs who have exted or shall exte these prests his or her exs &c. shall have recd the full amount of the debts owing to him her or them resply and do and shall apply the surplus (if any) of the share of each of them in the clear residue of the ptship effects in or towards such of his separate debts for which provision is hby made as shall not have been discharged out of the clear residue of his separate este in manner and pursuant to the directions hnbefe contd in that behalf And lastly do and shall pay to each of them the sd (D.) his exs ads or ass the clear residue or surplus (if any) of the produce of his separate este as also of the surplus (if any) of his share of the produce of the ptship effects subject nevss to the provision hnafr contd i. e. in case any one or more of the sd (D.) is are or shall become a cr or crs of the or. or ors of them either by having pd or payg out of the produce of his effects or orwise debts or the share of debts paye by the or. of them Then and in that case such of them the sd (D.) as shall be a cr or crs shall rece out of the surplus which would have belonged to such of them as shall be a dr or drs as afd the money which shall be owing to him or them as afd any thing hnafr contd to the contrary thof in anywise notwithstanding (a) *Provided always* and it is hby decld and agrd by and betn all the pties to these prests that in case there shall be any sum or sums of money owing or to be pd by the sd (D.) on bills or orwise which are not yet paye it shall and may be lful for the sd trustee or trustees for the time being to pay the same sums or a dividend thereon on being allowed discount or rebate

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Trust Deed.

Pay partnership
debts,

and surplus (if
any) to the se-
veral debtors.

Provision as to
the discharging
bills before they
are due.

(a) If a fiat has been issued against one of the partners, then say, "*Provided always* and it is hby decld and agrd by and betn the pties hereto that unless the fiat of bankruptcy awarded and issued agst the sd C. shall be rescinded within mths after the day of the date of these prests the trusts hnbefe decld for the bent of the separate crs of the sd C. shall cease and be void. *Provided also* and it is &c." See *above*.

No. CCCL.
Trust Deed.

To discharge
extents.
To discharge
debts not ex-
ceeding the sum
of £

Power to com-
pound with cre-
ditors &c.

Proviso that
creditors may
release or extend
the power of
compounding
debts.

for the time which shall remain unexpired at the time of the paymt of the same sums of money in the same manner as if the same debts had been proved or claimed under a fiat of bkptcy *Provided also* that it shall and may be lful for the trustee or trustees for the time being if he or they shall think proper out of the trust or any or. mos which shall come to his or their posson under or by virtue of the release (*or* Bargain and Sale) and Assignment bearing even date with these prests to satisfy and discharge the extents at the suit of the Crown which have been awarded agst the este and effects of the sd (*D.*) And also after paying thereout all such costs chas and exps as are hnafr directed to be raised and pd to pay the sevl crs of the sd (*D.*) whose debts respby do not exceed the sum of £ each the full amount of such debts nevss with this restriction that the proceeds of the ptship effects as far as the same will extend shall be applied in paymt of such only of the same debts as are owing on the sd ptship acct and that the proceeds of the separate estes of each of them the sd (*D.*) so far as the same will extend shall be pd and applied in paymt of such of the same debts as are owing by each of them the sd (*D.*) respby upon his separate acct [but the ptship property or the proceeds thereof may by way of loan to the separate este of the sd (*D.*) be applied in paymt and discharge of the money to be levied on the sd extents] And that it shall and may be lful for the sd (*D.*) or the survor &c. or the trustee or trustees for the time being if he or they shall see occasion and in his and their discretion think it expedient to settle and agree with any of the crs of the sd (*D.*) jly and sevly whose respive debts do not amount to £ and to make them such paymts or compensation for the same by way of composition as they may respby agree to accept *Provided always* that if at any meeting of the creditors to be convened for the purpe by fourteen days' notice in the London Gazette (*stating the day and place of such meeting*) it shall be deemed expedient by the major pt in value of the crs then present and it shall be then and there resolved and determined that the power and provision lastly hnbeft contd shall be reld and abandoned or shall be enlarged and extended as to the amount of the debts to be comprehended within such provision Then and in such case the same shall be either reld and aban-

doned by the sd trustee or trustees for the time being and shall thenceforth cease and be void to all intents and purps whatsr but witht prejudice to any composition or agrt previously made under or by virtue of the same provision or as the circumstances of the case shall require the trustee or trustees for the time being shall be at full liberty and have full power and authty to act under such enlarged or extended power of compounding debts as the case may be And also to pay to and for all or any of the crs of the sd (D.) either jtly or sevlly who by reason of infancy or or. disability cannot legally or witht breach of trust accede to these prests the full amount of the debts owing to the same resply and also to appropriate and set apart the amount of the debts owing to creditors in India or in pts beyond the seas who shall not before a final dividend shall be made accede to and exte these prests *And finally* if it shall be deemed necessary or expedient to retain such sum or sums of money as shall be required to answer the full amount of the debts in respect of which such appropriation is to be made the balance or surplus of debts (if any) after satisfying the debts of the crs residing abroad or so much of the same debts as the trustee or trustees for the time being shall think fit to satisfy shall be applied in the same or like manner as the residue of the produce of the sd trust estes *Subject* nevss to the provision hnafr contd that is to say *Provided always* and it is hby decld that all debts owing by the sd (D.) as well on the ptship as on the separate acct shall be verified and proved by the affidavits of the sd sevl crs stating the amount and conson of the same to be sworn before a Master Extraordinary in Chancery or a magistrate of the county or district in which the pty shall reside if the trustee or trustees for the time being shall require the same *Provided also* and notwithstanding any thing hnbeft contd it shall and may be lful for the sd trustee or trustees for the time being to compromise settle and ascertain the amount of the debt or debts claimed by the cr or crs resply and also the fund on which the pty or pties is are or ought to be deemed a cr or crs and also to separate distinguish and allot the separate property from the ptship property according to the best of his or their judgment for the purpe of dividing the final residue or surplus (if any)

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Trust Deed.

To set apart
debts of credi-
tors abroad.

Debts to be
verified on oath.

No. CCCL.
Trust Deed.
Provision as to
creditors having
securities.

Power to com-
pound debts
owing to the
debtors.

To sell upon
credit.

To refer dis-
putes to arbi-
tration.

betn the sd (*D.*) and their reptive or reptives *Provided (a) also* and it is hby decl'd and agrd that any cr or crs who hath or have any secty for his her or their debt or any pt thof shall or may exte these prests witht prejudice to the same secty or secties with the consent of the trustee or trustees for the time being and convert the same into money and rece a divd rateably with the or. crs for so much of the same debt or debts as shall not be answd and pd out of the proceeds of the same secty or secties And that the trustee or trustees for the time being shall or may in his or their discretion compound any debt or debts owing to the sd (*D.*) or any one or more of them and accept pt thof or give further time for paymt of the same debt or debts and shall or may sue or refrain from suing for any debt or debts as they shall think proper or sign a certificate of any psn or psns indebted to the sd (*D.*) who are or may become bankrupt And that the trustee or trustees for the time being shall or may make any arrangement he or they shall deem proper with any psn or psns holding any secties given by the sd (*D.*) or any of them as a pledge for money for the purpe of procuring possession of the lds and property comprised in any mtge made or secty given so nevss as that the conson or price given upon such arrangement shall not exceed the amount or value of the principal and int *And furr* that the sd trustee or trustees for the time being shall and may sell all or any pt of the trust property for money to be pd at a future day or upon credit or for secty or secties by way of bills of exchange or orwise as he or they shall think advantageous And shall or may sell or convert into money all contingent ints and secties which cannot immly be inforced with a prospect of advantage and all debts which shall be deemed bad or doubtful or which cannot be collected in within rease time And shall and may be at liberty at any auction or auctions to buy in all or any pt of the trust property which shall be offered for sale and to resell the same at any future auction or by private contract witht being liable to answer for any loss or diminution of price upon such resale *And* it is hby furr decl'd and agreed that in case any doubt or difficulty shall arise in ascertaining the amount of any sum or sums of money due or paye

(a) As to the reason for this clause, see Pref. sect. 5.

to any cr or crs of the sd (D.) either on their ptship or separate acct Then and in evy such case the full and exclusive power of ascertaining the amount of the same debt or debts respaly shall be referred to such psn or psns as the sd trustee or trustees for the time being on the one pt and the cr or crs*the amount of whose debt or debts shall be called in question of the or. pt shall appt for that purpe And that the award and determination of the person so apptd shall be final and conclusive on all psns intituled to any int or bent under these prests And that all differences which shall arise respecting the amount of any debt or debts owing to the sd (D.) or any one or more of them jtly or separately or touching or concerning any property claimed as their or any or either of their effects or belonging especially to any of their crs shall be settled in the same or like manner if the sd (T.) or &c. shall think it proper and requisite to settle the same *And* it is furr provided and agrd that the trustee or trustees for the time being shall and may rent and hire such places and employ such psns and at such salaries as he or they shall think proper and necessary for carrying on the affairs of the trust and at the expence of the trust este *And also* in case it shall be deemed expedient to defend any action or suit touching or concerning the trust este the trustee or trustees for the time being shall or may exercise his or their discretion in commencing and defending the same and shall or may retain all costs chas and exps in anywise relating thereto by and out of the monies which shall be recd by him or them by virtue of the trusts afd *And furr* that it shall and may be lful for the trustee or trustees for the time being to give and deliver to each or any or either of the sd (D.) either the use for a time to be limited or the absolute property of all or any pt of the household furniture and linen of each of the sd (D.) any thing hnbefe contd in anywise to the contrary notwithstanding *And* it is hby decld and agrd that the rect and rects of the trustee or trustees for the time being shall be a full and effectual discharge and full and effectual discharges to all psns who shall become purchasers of the este and effects of the sd (D.) to be conveyed and assigned and covtd to be surrendered by the sd indre of Release (*or* Bargain and Sale) and Assnmt bearing even date herewith and to his her or their respive hrs exs ads and ass for such purchase money

No. CCCL.
Trust Deed.

Power to rent
offices, hire
clerks, &c.

To defend
actions, &c.

To allow
debtors the use
of household
furniture, &c.

Receipts of
trustees to be
valid discharges.

No. CCCL. Trust Deed.	or so much thof as shall by such rect or rectis be acknd or expsed to be recd so that no such purchaser or purchasers or any of them or any or either of their hrs exs ads or ass shall aftwds be subject or liable to attend or see to the applicon of such trust mos ^r or any pt thof or be responsible or accountable for the misapplicon of such trust mos or any pt thof by reason or means of the trusts hnbefe decld or upon any or. acct whatr
Purchasers not liable.	And each of the sd (T.) for himself sevily (a) and respily and for his sevl and respive exs ads and ass and not the one for the or. of them doth hby covt &c. with and to the sd (C.) that they the sd (T.) or the survors &c. shall and will from time to time as soon as conveniently may be after the date hereof make a divd or divds of all the trust mos which shall have been recd by them or any or either of them by virtue or in pursuance of the sd indre of Release (or Bargain and Sale) and Assmnt unto and amongst all the crs of the sd (D.) who shall exte or accede to these prests rateably according to the sevl trusts hnbefe expsd and decld concerning the same subject nevss to the provisions hnbefe contd and shall and will make the first divd as soon as
of shillings in the pound;	the money in hand shall be sufficient to pay shillings in the pound on the amount of the debts paye out of the same
and further dividends.	money and a furr divd from time to time as often as the money in hand shall be sufficient to pay shillings in the pound
To deposit trust monies with bankers.	And that the money which shall from time to time be recd on acct of the sd trust este and all bills and secties for the same shall be deposited with Messrs. bankers
To make out an account at stated times, to be laid before creditors.	in the name and names of the trustee or trustees for the time being And also shall and will once in evy calr mths or oftener if they shall think proper make out a full parlar of the acct in the business of the trusts reposed in them as afd and produce the same for the inspection of the sd pties hereto of the third pt at a meeting to be called for that purpose by 14 days' notice in the London Gazette and at such meeting shall and will make all such statements and give all such explanations as shall be requisite for the elucidation of the same accts and shall and will in the exon of the sd trusts reposed in them as afd act

(a) As to the necessity of the covenant on the part of the trustees being several, see sect. 2.

to the best of their judgment for the bent and advantage of all the psns interested in the same trust *Provided always* and it is hby furr decl'd and agr'd that when all the trusts hby reposed in the sd (*T.*) or the survors &c. shall be fully exted and performed as far as the same shall in the opinion of the trustee or trustees for the time being be practicable the sd trustee or trustees for the time shall call a meeting of the crs of the sd (*D.*) by 14 days' notice &c. and at such meeting shall and will produce their acct respecting the trusts hby in him and them reposed for the inspection of the crs present at such meeting And that the major part in value of the crs so present shall have full power by their resolution to allow the same accts and that when so allowed they shall be binding and conclusive on all pties interested therein And that the same major pt of the crs shall also have full power to declare the trustee or trustees for the time being fully acquitted and released and he and they accordgly shall be acquitted and released from the trusts reposed in him and them and the trust accts finally closed subject nevss to any paymt by way of final divd of the trust money then in hand *Provided always* and it is hby decl'd and agr'd by and betn the pties to these prests that in case of the death of any one or more of the sd (*T.*) or in case any of them shall refuse decline or be incapable to act Then and in either of these cases it shall and may be lful for the major part of the crs of the sd (*D.*) to be present at any meeting held pursuant to notice in the London Gazette to nominate and choose such psn or psns as they shall think fit to be a trustee or trustees in the place of such trustee or trustees as shall die refuse decline or be incapable to act and every such psn so to be chosen shall have the like power authority and control as any of them the sd (*T.*) have or can or may have by virtue of these prests *And furr* that the sd (*T.*) or the survors &c. or the trustee or trustees for the time being shall be charged and chargeable only for such mos as the same trustee or trustees resply shall actually rece by virtue of the trusts hby reposed in him or them notwithstanding his their or any of their giving or signing or joining in giving and signing any rect or rects for the sake of conformity And that any one or more of them shall not be answerable or accountable for the or. or ors of them but each and evy of them resply for his own

No. CCCL.
Trust Deed.

Trustees to be
released.

Appointment of
new trustees.

Indemnity
to trustees.



No. CCCL.
Trust Deed.

Trustees to
reimburse
themselves.

To refer doubtful
matters to a
meeting of
creditors.

acts deeds and neglects or defaults only And that they or any or either of them shall not be answerable or accountable for any banker broker or or. psn with whom or in whose hands any pt of the trust mos shall or may be deposited for safe custody or orwise in the exon of the trusts hnbeft mentd or for any psn or psns who shall be employed to assist them as afd in the exon of the sd trusts or for any or. misfortune loss or damage which shall or may happen to the trust este in the exon of the afd trusts or in relation thereto unless the same shall happen by or through their own wilful negligence or deft only *And also* that it shall and may be lful for the sd (T.) and the survors &c. by and out of the mos which shall come to their hands by virtue of these prefts to retain and reimburse himself and themselves resply and also to allow to his and their co-trustee or co-trustees all costs chas dams and exps which they or any of them shall or may suffer sustain expend disburse be at or put unto in or about the exon of all or any of the afd trusts or orwise by virtue of these prefts *Provided always* and it is hby decld and agrd by and betn the pties to these prefts that in case any question matter or thing shall arise in the management regulation or conduct of the affairs of the sd (D.) or any or either of them which is not distinctly and clearly provided for by these prefts and by the sd indres of &c. or in case the trustee or trustees for the time being shall not be able to determine and agree upon the course of conduct to be pursued in the management of the sd trusts Then and in every such case it shall and may be lful for the trustee or trustees for the time being to call a meeting of the crs of the sd (D.) by fourteen days' notice in the London Gazette and to submit such question matter or thing to the consideration of the crs who shall or may be present at such meeting and that the determination of the major pt in value of the sd crs present at such meeting resply shall be binding and conclusive on all pties intitld to any bent under the trusts hnbeft expssd and decld *And furr* that if any question shall arise upon the true construction of these prefts or of any clause or provision herein contd the same shall be submitted to

Esquires Lincoln's Inn and the opinion of them or any two of them shall be binding and conclusive

Provided always and notwithstanding all or any of the provisions hnbefe contd the sd (*D.*) shall as to the balance of the accts subsisting or to arise betn them as ptnrs or on acct of the ptnshp either by any paymts made or hrafr to be made by any or either of the sd ptnrs or out of his or their effects beyond his or their proportional pt or pts be in the same situation in all respects and have the same and like remedies as near as may be as he or they resply would have had as to and agst any one or more of them his or their exs or ads in case they had become and had been decl'd bankrupt under a fiat and each of them had sevly obtained his certificate under the same fiat so that on the one hand no one or more of them the sd (*D.*) his or their hrs exs or ads may remain liable to the or. or ors of them his or their hrs &c. for any debt or duty which would have been discharged or relieved by such fiat of bankruptcy and certificate thereunder and so that on the or. hand no one or more of them his or their hrs exs or ads may be discharged from any debt or duty to which he or they would have been liable in case of such bankruptcy and certificate under the same And each of them the sd (*D.*) for himself his hrs exs and ads and as to and concerning only the acts deeds and defts of himself his hrs &c. doth hby covt &c. with and to the sd (*T.*) and the survors &c. that they the sd (*D.*) resply have at or before the time of their respive exons of these prests made a true and faithful acct and discovery to the trustees of all the este effects and property real and psnl belonging to them as well on their ptnshp as on their respive private accts and that they have not concealed withheld or embezzled any pt or pts thof and that the sd bks of acct signed by them the sd (*D.*) resply and delivered up to the sd (*T.*) at the time of the exon of these prests do contain a just and true acct of all the ptnshp and private este effects and debts of them the sd (*D.*) resply as far as it is in their power to make out the same accts And that they the sd (*D.*) any or either of them shall and will at any time or times hrafr when thereunto requested make such discoveries in relation to and such explanations of their affairs as the sd (*T.*) and the survors &c. shall require and shall and will assist the trustee or trustees for the time being in conducting and managing the concerns of the sd trust este in such manner as to the sd trustees

No. CCCL.
Trust Deed.

Insolvents to stand in the same relation to each other as in case of bankruptcy.

Covenants from debtors,

that they have made out a true account of their estate;

will assist the trustees in managing the concerns.



No. CCCL.
Trust Deed.

Letter of
licence.

On certificate
of conformity,
debtors to be
discharged from
their debts.

shall seem rease *And furr* that if any or either of them the sd (D.) has wilfully concealed or shall wilfully conceal any pt of his ptshp or private property to the value of £ or shall be guilty of any wilful breach or deft in performance of his covts herein contd or any of them Then and in that case on demand thof made by any one or more of the sd crs pties hereto of the second and third pts his her or their exs or ads the psn or psns by whom such concealment breach or deft has been or shall be made his or their hrs exs or ads shall and will answer and pay to all and evy the same cr or crs resply his her or their exs ads or ass the full amount of the debts owing to the same cr or crs resply or so much thof as shall not have been previously recd by him her or them under the trusts hnbeft decld and contd *And this Indre furr witnesseth* That in conson of the preses they the sd sevl pties of the second and third pts *Have* and each of them *Hath* given and granted &c. (see *ante*, No. CCCXL. *Deed of Inspection*, and also No. CCCXLV. *Letter of Licence*) from the exon of these prests henceforth until the trustee or trustees for the time being by any writing under his or their hand or hands to be indorsed on these prests or a duplicate thof shall declare the benefit of this present provision so to be forfeited or orwise determined and at an end by the non-conformity or misconduct of him or them the sd (D.) full and free liberty &c. (see *ante*, No. CCCXLV. *Letter of Licence*) and that if the sd (T.) or (C.) &c. shall molest or interfere with the psns or effects of the sd (D.) or any or either of them orwise than in the exon of the trusts afd and contrary to the true intent and meaning of these prests then the sd (D.) or such one or more as shall be so molested as afd or his or their hrs exs or ads shall thenceforth be and by these prests he and they is and are clearly and for ever acquitted exonerated and discharged of and from all actions suits debts covts secties claims and demands whatsr at law and in equity of the cr or crs by whom they the sd (D.) or any or either of them shall be so molested as afd and that this present letter of licence &c. *And furr* that when and so soon as the sd (T.) or the survor &c. or the trustee or trustees for the time being shall by writing under his or their hand or hands to be indorsed upon these prests certify that the sd (D.) have conformed themselves in all respects to their satisfaction so as to be intitled to be discharged from their debts then and immly

after such certificate shall be indorsed thereon and signed by the trustee or trustees for the time being they the sd (*D.*) their exs and ads shall thenceforth be absolutely discharged of and from all and singr the debts and sums of money and or. demands whatsr which are now due and owing or secured or paye by or from the sd (*D.*) to the sd crs in the way of their business and also upon their private or separate accts resply or upon or by virtue of any secty or secties or any or. conson or acct whatsr and also of and from all and all manner of actions suits proceedings dams costs chas and exps dues debts reckonings accts claims and demands whatsr which &c. see *ante*, No. CCCXLVII. *And furr* that they the sd crs pties hereto of the second and third pts or any or either of them or their exs or ads or ptnrs shall not nor will for or in respect of any debt or demand now due or owing to them or any or either of them arrest or attach the psn or goods of any or either of them the sd (*D.*) in whose favour such last mentd certificate or certificates shall have been signed nor take his or their psn or psns or his or their real or psnl property in exon nor sue him or them in whose favour such last mentd certificate shall have been signed in any or. manner than for conformity only And also that in case the psn or psns in whose favour such last mentd certificate or certificates shall be signed shall appear to any action or actions suit or suits in which he or they shall be named for conformity or shall suffer the plaintiff or plaintiffs in such action or actions suit or suits to enter (as he she or they is and are hby authorized to do) an appearance or as the case may be file common bail for the psn or psns in whose favour such last mentd certificate or certificates shall be signed such plaintiff or plaintiffs shall and will reimburse and pay to the sd psn or psns resply who have obtained his or their certificate or certificates as afd the full amount of all the costs chas dams and exps which shall be incurred or sustained by such psn or psns resply by reason or on acct of such actions or suits or any of them *Provided always* nevss and these prests are upon this condon and it is hby expssly decld and agrd by and betn the pties to these prests that unless all the just crs of the sd (*D.*) jtly and sevly (except the crs of the sd C. seeking relief under the fiat of bankruptcy) shall come in within calr mths after the day of the date of these prests or orwise accede thereto by

No. CCCL.
Trust Deed.

Debtors having
obtained cer-
tificates not to
be sued, except
for conformity.

If sued for con-
formity, their
expenses to be
repaid.

Deed to be
void, unless
creditors come
within
months.

No. CCCL.
Trust Deed.

Debtors to
receive the
dividends of
creditors not
coming in.

agreeing to accept a divd under the same or in case any difficulties shall within the sd time arise in the exon of the trust hnbefe contd and which shall render the same impracticable. Then and in either of the sd cases all the clauses and provisions of the hnbefe contd shall if the trustees or trustee for the time being shall think fit to make a declaration to that effect to be indorsed on these prests or a duplicate thereof on or before the expiration of six calendar months after the date of the making of the same shall cease determine and become void to all intents and purposes whatsoever anything hnbefe contd to the contrary thereof notwithstanding. And the sd (T.) or the survivors &c. shall reconvey or assign and deliver to the sd (D.) their hrs exs and ads all the sd este effects trust mos and prestes conveyed and assigned by the sd indre of Release (or Bargain and Sale) and Assignment bearing even date with these prests first deducting therefrom their exps as afd or shall convey assign pay and apply to the same estes effects and mos as the sd (D.) their hrs exs or ads according to their respive rights and ints therein shall direct or appt and shall reinstate them resply in the same condition as they would resply have been if these prests had not been made and exted or as near thereto as reasonably may be and the existing circumstances will admit. *Provided always* and is hereby furr decld and agrd by and betn the pties hereto that in case any cr or crs of the sd (D.) or the exs or ads of the same cr or crs [except crs labouring under such disability as afd and except crs seeking relief under the sd fiat of bankruptcy and except such crs as the sd (T.) shall pay settle or compound with pursuant to the power hnbefe contd] shall for the space of six months after notice for that purpose to be given to the same cr or crs his her or their exs or ads by the sd (T.) or any or either of them refuse neglect or decline to exte these prests or to accept of the same Then and in that case the cr or crs so refusing neglecting or declining his her or their exs or ads shall be excluded of and from all or any bent of or under any of the trusts hnbefe decld expssd or contd and all such and so many of the sd (D.) as shall be the debtor or debtors of the same cr or crs or his her or their exs or ads shall stand in the place of the same cr or crs resply and have the same or like bent under the trusts hnbefe contd as if the same cr or crs his her or their exs or ads had exted these prests. *Provided always* that the pro

vision lastly hnbefe contd shall not extend nor be construed to extend to any cr or crs resident abroad the amount of whose debts shall be retained or appropriated as hnbefe is mentd and apptd unless such notice as last afd shall be given with the concurrence of the trustee or trustees for the time being to be testified by their or his joining therein *Provided lastly* that no psn or psns shall be intitled to be admitted a cr or crs under the trust hnbefe contd unless notice shall be given of his her or their debt before a final dividend shall be made under the trusts hnbefe contd And that all psns who shall be admitted crs after a first or any subsequent dividend shall have been made shall be admitted crs upon the terms only of not disturbing any former divd or divds nevss with a right to be placed on a footing with the or. crs or as near as may be without disturbing such former or or. divd or divds *In witness &c. see ante, No. XLVI.*

No. CCCL.
Trust Deed.

No. CCCLI.

Release of Freeholds, and Covenant to surrender Copyholds to Trustees in Trust to sell and pay Debts where the debtor is not a Trader.

No. CCCLI.
*Conveyance in
Trust to sell.*

Obs. As to the validity of such a deed, see Pref. s. 9; and as to the stamps, see s. 11.

This Indre made &c. Betn (debtor) of &c. of the one pt and (trustees) of &c. of the or. pt Whas the sd (D.) is indebted to sundry persons mentd in the schedule hereunder written or hereunto annexed in several sums of money secured by mortgages bonds and judgments and is also indebted to sevl or. psns named in the sd schedule in very considerable sums of money due upon notes and or. simple contracts And the sd (D.) hath granted sevl annities or rent charges to different psns during their lives or the life of some or. psn or for or during his own life and for securing the paymt of the sd annities hath confessed sevl judgmts which have been entered up agst him or hath charged the sd annities on his real este or on some pt or pts thof which are likewise mentd in the sd schedule And whas the sd (D.) is seised of and in the sd sevl freehd and copyhd manors messes lds tents

Recital of debts.

No. CCCLI.
*Conveyance in
 Trust to sell.*

Trusts to pay
 debts.

Testatum.

Habendum.

(rectories advowsons tithes) and heredit in the counties of &c.
 hnaft parlarly mentd and described in fee-simple in posson sub-
 ject to the sevl mtges chas annities and or. incumbs affecting the
 same as afd And the sd (D.) being desirous of making provision
 for the due and regular paymt and discharge of the sevl principal
 sums of money due and owing from him on the mtges bonds
 judgmts notes and simple contracts which are parlarly mentd
 and set forth in the schedule thof hereunder-written or hereunto
 annexed and the int now due and which shall from time to time
 become due for or in respect of such of the sd sum or sums of
 money as now carry int until the same can be pd off and dis-
 charged hath proposed and agrd to convey surrender and assure
 the sevl messes &c. and heredit whereof he is so seised as afd
 unto and to the use of the sd (T.) their hrs and ass *Upon trust*
 that they and the survor or survivors of them or the hrs or ass of
 such survor shall and do by sale or mtge of the sd preses or of a
 competent pt thof levy and raise a sufficient sum of money for the
 purps afd and by and out of the money arising from such sale or
 sales mtge or mtges pay off and discharge the sd principal sums
 of money so due and owing from the sd (D.) as afd and the int
 now due and to become due in respect of the same or any of
 them and redeem the sd annities (except an annity to as
 hnaft is mentd) or such of them as they shall think fit in such
 manner as is hnaft mentd *Now this Indre witnesseth* That for
 the purps afd and for the more effectually carrying the sd recited
 proposal and agrt of the sd (D.) into execution and for and in
 conson of the sum &c. to him the sd (D.) in hand &c. pd by the
 sd (T.) at &c. the rect &c. and for divers good and valuable causes
 and consens him the sd (D.) hereunto moving He the sd (D.)
Hath granted bargained sold aliened reld and confirmed and by
 &c. *Doth* grant &c. unto the sd (T.) in their actual posson (a) &c.
 and to their hrs and ass *All those* &c. And all the este &c. and the
 revn &c. see *post*, RELEASE (CONVEYANCE) *To Have and to Hold*
 thesd manors or lordships messes lds tenmts (rectories&c.) heredit
 and all and singr or. the preses hby granted and reld or intended
 so to be and evy pt thof with their and evy of their apts (except
 as hnbefe is excepted) unto and to the use of the sd (T.) their

(a) Since the 4 & 5 Vict. c. 21, abolishing the lease for a year, this clause is unnecessary.

hrs and ass for ever *But nevss* upon the trusts and to and for the sevl intents and purps hnaft^r mentd and decl^d of and concerning the same *And this Indre furr witnesseth* That for the purps and consons hnbefe mentd He the sd (*D.*) for himself his hrs exs and ads doth hby promise and agree with and to the sd (*T.*) and the survor of them and the hrs exs and ads of such survor that he the sd (*D.*) or his hrs shall and will immly or as soon as conveniently may be after the exon of these prests surrender or cause to be surrendered into the hands of the respive lords of the manor of R. in the county of and the manors and rectory of S. in the county of according to the custom of the same manors *All those &c.* And also *All or.* the customary messes lds tents and heredts of him the sd (*D.*) held of the afd manors of to the use of the sd (*T.*) and their hrs and ass *But nevss* upon the trusts and to and for the sevl intents and purps hnaft^r mentd and decl^d of and concerning the same *And it is hby expssly decl^d and agrd by and betn the pties to these prests and it is the true intent and meaning of them and of these prests that all and singr the freehd and copyhd manors or lordships messes lds tenmts (rectories advowsons tithes) and heredts hnbefe parlarly mentd and described are hby granted and reld and covenanted to be surrendered to them or intended so to be upon the trusts and to and for the sevl intents and purps hnaft^r mentd and decl^d of and concerning the same resply that is to say Upon Trust that they the sd (*T.*) or the survor &c. shall and do as soon as conveniently may be after the exon of these prests of their and his own proper authty witht the concurrence or any furr power or authty of or from the sd (*D.*) or his hrs (unless the same shall be required by the trustee or trustees for the time being or any purchaser or purchasers mortgagee or mortgagees) convey and surrender either absolutely or by way of mortgage in fee-simple or for any term or terms of yrs *All* and singr the sd freehd and copyhd manors or lordships messes lds &c. and heredts hnbefe mentd and hby granted and reld and covenanted to be surrendered or intended so to be with their and evy of their apts or a sufficient pt thof for the purps of such sale or sales to be made either togr or in pcls and either by public or private contract for the best price or prices that at the time of such sale or sales can be reasonably had or gotten*

No. CCCLI.
Conveyance in
Trust to sell.

Covenant to
surrender copy-
holds.

Declaration of
trusts.

Upon trust to
sell or mort-
gage.

No. CCCLI.
*Conveyance in
Trust to sell.*

Trustees' re-
ceipts to be
sufficient dis-
charges ;

out of the pro-
ceeds of sale
first to pay
costs, &c.

Next to pay
grantor an
annuity ;

then to pay off
mortgages upon
estates to be
sold.

To redeem an-
nuities.

for the same and such mortgage or mortgages to be made of the whole or any pt of the preses hby granted or conveyed or intended so to be to such psn or psns as shall be willing to purchase or take a mortgage or mortgages thof who having pd his her or their purchase or mortgage money to and obtained a rect or rects for the same from the sd (T.) or the survor of &c. shall be by such rect or rects fully acquitted and discharged from such purchase money or monies or the sum or sums of money to be borrowed on mtge or mtges of the sd preses or any of them or so much thof as such rect or rects shall expss to be recd and shall not aftwds be liable to see to the application of the same or answerable for the loss or misapplication thof *And upon this furr trust* that they the sd (T.) or the survor &c. or the exs or ads of such survor do and shall by with and out of the money to arise by such sale or sales or to be borrowed upon such mtge or mtges and by and out of the rents and prfts of the sd manors messes &c. and or. the heredts hby granted and reld and covenanted to be surrendered or intended so to be in the first place pay the costs chas and exps of the trustee or trustees for the time being in the exon and performance of the trusts hby reposed in the sd (T.) and also the costs and chas of preparing for and making such sales or mtges or anywise relating thereto And in the next place do and shall pay to the sd (D.) yrly and evy yr the sum of £ by two equal portions on the feast of and the feast of in evy yr witht making any deduction or abatement out of the sd yrly sum to be pd or allowed to the sd (D.) for taxes or on any or. acct whatsr the first paymt of the sd yrly sum of £ to be made on such of the feasts as shall happen next after the exon of these prests And after the paymt of the sd costs chas and exps and of the sd annnty shall and do satisfy and discharge all the principal money and int now due or hrafr to grow due on the sevl mtges mentd in the schedule hereunder-written or hereunto annexed made by the sd (D.) of or affecting the manors &c. and heredts so to be sold such mtges to be resply pd out of the money arising by sale of the estes whereon they are resply charged And in the next place do and shall by with and out of the money to arise by such sale or sales or to be borrowed on any mortgage or mortgages to be made by the sd (T.) or the survor &c. redeem all the annnties granted by the sd (D.) (except the annnty to the sd

) or such of them as the sd (*T.*) shall think fit and pay all the arrears thof and the costs and chas of assigning or entering satisfaction on the records of the sevl judgmts for the securing such annities *And* after redeeming the same and paying all such arrears thof and the costs and chas as afd do and shall pay off and discharge the sevl sums of money secured by the judgmts mentd in the schedule hereunder-written or hereunto annexed entered up agst the sd (*D.*) and the int thof and the costs and chas of assigning or having satisfaction ackngd on the records of such judgmts to be pd and discharged at such time or times in such order course priority and manner as to them the sd (*T.*) or the survor &c. shall seem most convenient *And* from and after paymt thof do and shall discharge all sums of money secured by the sevl bonds parlarly mentd and specified in the schedule hereunder-written or hereunto annexed to be due and owing to the sevl psns therein named togr with the int thof now due and to become due the sd sevl debts secured by bonds to be pd and discharged at such time or times and in such order course priority and manner as to them the sd (*T.*) or the survor shall seem proper and expedient *And* from and after full satisfaction and discharge of all the sd sevl sums secured by judgmts and bonds and all int now due and to grow due for the same resply *Then upon Trust* that they the sd (*T.*) or the survor &c. shall and do pay off and discharge all the sevl simple contract debts parlarly mentd and specified in the sd schedule to be due and owing to the sevl psns therein also named togr with the int of such as carry or bear int the same simple contract debts to be likewise pd off and discharged at such time or times and in such order course priority and manner as to them the sd (*T.*) or &c. shall seem most proper *And* from and after full paymt satisfaction and discharge of all the sd costs chas and exps and the sd annnty hby provided for the sd (*D.*) and the sd sevl mtges judgmts bonds and simple contract debts in the order and manner afd and all int due and to grow due for such of the same resply as do carry or bear int *Then upon Trust* that they the sd (*T.*) and the survor &c. shall and do pay all the residue of the money arising from such sale or sales as afd (if any shall remain in their hands unapplied or undisposed of) after paymt of such debts chas outgoings and incumbs as afd unto the sd (*D.*) his

No. CCCLI.
*Conveyance in
Trust to sell.*

To discharge
judgment debts;

and then all
bond debts;

and then to
discharge all
simple con-
tract debts;

then to pay all
the residue of
the money un-
disposed of to
the grantor ;



No. CCCLI.
Conveyance in
Trust to sell.

and reconvey
premises that
remain un-
sold.

proviso that
trustees shall
receive rents
until sale,
and apply them
upon the same
trusts.

exs ads and ass to and for his and their own use and bene
And it is hby decl'd and agr'd by and betn the sd pties to the
prests that in case any pt of the sd manors and heredit's hnb
mentd and hby granted &c. and directed to be sold shall rem
unsold and undisposed of after the sd sevl mortgages judg
bonds and simple contract debts and all int due and to gr
due for or in respect of such of them as do carry or bear
shall be fully pd satisfied and discharged Then and in such c
and as soon as conveniently may be aftwds they the sd (T.)
the survor &c. shall and will at any time upon the request a
at the costs and chas of the sd (D.) his hrs or ass recon
surrender and reassure unto and to the use of the sd (D.)
hrs and ass or unto such or. psn or psns as he or they shall
any writing or writings signed by him or them under his or th
hand or hands direct and appt all such pts and so much of t
sd freehd and copyhd manors &c. and heredit's hnbefe mer
with the apts as shall remain unsold with the equity of redem
tion of such pt thof as shall be so mortgaged free from inc
to be made done or committed by the sd (T.) or the survor
his hrs &c. in the mean time but so as the psn or psns requi
to make and exte such reconveyance surrender and assurac
be not compelled or compellable for the making thof to go
travel from the place of his or their respive abode or dwelli
Provided always and it is hby also decl'd and agr'd by and be
all the sd pties to these prests that in the mean time and un
a sale or sales of the manors &c. and heredit's hby granted a
reld and covenanted to be surrendered or intended so to be a
directed to be sold as afd or of a competent pt thof for the pur
afd can be properly effected and completed it shall and may
lful to and for the sd (T.) or the survor &c. to hold and enjoy t
same preses and evy pt thof and rece and take all the rer
issues and prfts thof which from henceforth until the time
such sale or sales shall accrue and grow due in respect of t
same Upon Trust that they or the survors &c. shall and do fr
time to time apply and dispose of the rents issues and profits
to be recd in the first place in paying and discharging of the
costs chas and exps of the exon of the trusts hnbefe mentd a
in the next place in paymt of the sd annnty hnbefe provided
the sd (D.) and after paymt thof in paying and discharging

such arrears of int as are now due and owing upon the sd sevl mtges affecting the este hby granted and released or intended so to be and the growing int thof and also the int of the sum or sums of money to be borrowed by virtue of these prests And in the next place in paymt of the sd annuities and the int of the sd sevl or. debts or sums of money in the sd schedule mentd and of such or. of the debts of the sd (D.) the paymt whereof is hby provided for as carrying int or such of them as they shall think fit (before the same shall be pd off and discharged by virtue of these prests) And in case the rents issues and prfts of the sd preses so to be recd as afd shall be more than sufficient to pay the sd annty hby provided for the sd (D.) and to keep down all surcharges of int due and to accrue due as afd and the annities granted by the sd (D.) *Then upon Trust* that they the sd (T.) or the survor &c. shall and do from time to time and until such sale or sales shall be made as afd pay and apply the residue or surplus of such rents issues and prfts for and towards satisfaction and discharge of the principal of the sd secties debts or sums of money in the sd schedule specified and in or towards the redeeming the sd annities so far as the same will extend *And this Indre furr witnesseth* That for the purps afd and for carrying the sd hnbefe recited agrt and proposal of the sd (D.) into more effectual exon and also for the consons hnbefe mentd he the sd (D.) *Hath* bargained sold and assigned and by &c. *Doth* &c. unto the sd (T.) or the survor &c. and the exs ads and ass of such survor all such rent and rents and arrears of rent and rents sum and sums of money whatsr which at the time of the exon of these prests is and are due and owing to him the sd (D.) from all evy or any of the tenants farmers or occupiers of all or any of the freehd and copyhd manors &c. heredts and preses hnbefe mentd to be hby granted and reld and covenanted to be surrendered unto and to the use of the sd (T.) their hrs and ass upon the trusts afsd and all powers remedies and means whatsr for recovery of the sd rent and rents and arrearages of rent and rents and also all the right title int property claim and demand whatsr of him the sd (D.) therein or thereto or in respect of the same *To have* hold rece and take the same unto the sd (T.) or the survor &c. as fully and amply to all intents and purps as the sd (D.) his exs or ads could or might have

No. CCCLI.
Conveyance in
Trust to sell.

Further tes-
tatum.

No. CCCLI.
Conveyance in
Trust to sell.

Power of attor-
ney to receive
and recover
rents.

Proviso as to
creditors pre-
serving.

done in case these prests had not been made *Upon such Trusts* nevss and to and for such intents and purps and to be pd applied and disposed in such sort and manner and form as are hnbefe mentd expssd and decld of and concerning the same and to and for no or. use intent or purpe whatsr And for the better enabling the sd (T.) and the survor &c. to recover and rece the rent and rents and arrears of rent and rents sum and sums of money hby assd or intended so to be He the sd (D.) *Hath* made ordained constituted and apptd and in his place and stead put and deputed and by these prests *Doth* make &c. the sd (T.) and each and evy of them and the survor &c. and the exs ads and ass of such survor jly and sevly his true and lful atty and atties for him the sd (D.) and in his name or in their own names or name to ask for demand rece and take all and evy such rent and rents arrears of rent and rents so assd as afd now due to the sd (D.) from all evy or any of the tenants farmers or occupiers of the sevl manors heredit and preses hnbefe mentd and upon the rect of the same or any pt or pts thof to give any rect rele or or. discharge or discharges for the same either in their own names or in the name of him the sd (D.) or of his exs or ads And also in case of neglect of paymt thof for him the sd (D.) and in his name or in their own names to employ or make use of all such lful remedies and means whatsr for the recovery and compelling the paymt of all such rents and arrears of rent so assd as afd as to them the sd (T.) or the survor &c. shall seem meet and expedient either by entering upon the sevl manors messes lds tents and heredit in respect whereof such rent or rents and arrears of rent or rents are due and by seizing and distraining all or any goods and chattels that shall be found thereupon or upon any pt or pts thof or by bringing any action or actions or orwise howsr and generally to do and transact in and about the preses all and whatsr the sd (D.) could do if he were personally present and did the same he the sd (D.) hby ratifying and confirming all and whatsr the atties or atty shall lfully do or cause to be done therein by virtue of these presents *Provided also* and it is hby expssly decld and agrd by and betn the sd psies to these prests and it is the true intent and meaning of them and of these prests that in case any of the psns named in the schedule hereunder-written or hereunto annexed the crs

of the sd (*D.*) shall at any time after the exon of these prests bring or commence or cause to be brought or commenced any action or actions suit or suits either at law or in equity agst the sd (*D.*) his hrs exs or ads or any of them or agst the sd (*T.*) or the survor &c. for the purpose of compelling the paymt of their respive debts or sums of money in the sd schedule mentd or for paymt of the sd annities or any of them or any pt or pts thof resply then in such case the psn or psns so bringing or commencing any such action or actions suit or suits for the purps afd shall not rece (*a*) or be pd any sum or sums of money for or in respect of his or their respive debts out of the preses hby conveyed or have or be intitled to have any bent or advantage whatsr under and by virtue of these prests or the trusts hby created and decld *And whas* it is probable that some debts of the sd (*D.*) intended to be satisfied and pd under and by virtue of these prests may be omitted to be inserted in the schedule hereunder-written or hereunto annexed at the time of the exon of these prests but may hrafr appear and be discovered it is therefore expssly decld and agrd by and betn the sd pties to these prests that in that case provision may be made for the paymt of such debts omitted out of the schedule (if any) as the sd (*T.*) or the survor &c. or the trustees or trustee for the time being shall think proper to discharge and that it shall be lful for the sd (*T.*) and the survor &c. in case they shall think fit (but not orwise) with the consent and approbation of the sd (*D.*) testified in writing under his hand by and out of the money to arise from such sale or sales or by such mtge or mtges as afd to pay off and discharge all such debts as the sd trustees or trustee for the time being shall think were intended to be provided for by these prests and omitted to be inserted in the sd schedule anything hnbefe contd to the contrary notwithstanding And the sd (*D.*) for himself his hrs &c. doth covt &c. with &c. the sd (*T.*) in manner following that is to say That for and notwithstanding any act deed matter or thing by him the sd (*D.*) or any of his ancestors or any psn or psns claiming or to claim by from or under him them or any of them made done extd committed or suffered to the conty (except as hnafr is excepted) he the sd

No. CCCLI.
*Conveyance in
Trust to sell.*

Provision as to
debts accidentally
omitted in
schedule.

Covenants from
debtor.

Seised in fee.

(a) As to the validity of such a provision, see Pref. sect. 9.

No. CCCLI.
*Conveyance in
 Trust to sell.*

Not to hinder
 execution of
 trusts.

(D.) at the time of the sealing and delivery of these prests is lfully rightfully and absolutely seised of and in or well and sufficiently intitld unto the sd freehd and copyhd manors messes &c. and heredts and all and singr or. the preses hby reld and covenanted to be surrendd or intended so to be with their and evy of their rights members and apts of a good sure perfect absolute and indefeasible este of inhance in fee-simple witht any manner of condon proviso power of limitation or revocation or any or. cause matter or thing whatsr which may can or shall alter change charge revoke determine or affect the same [other than and except the mtges and or. incumbs debts and annities hnbefe mentd or set forth in the schedule hereunder-written or hereunto annexed and which are to be pd off and discharged in manner afd and or. than and except one annnty or yrly rent-charge of £ per ann. granted by the sd (D.) for the bent of his sister M. D. for her life and charged upon the sd preses at T. in the sd county of S. which is not intended by the sd pties to these prests to be redeemed but to remain a charge upon the este in case it shall not be found more convenient to be charged or made chargeable upon some or. pt or pts of the sd preses hby granted and reld and so to remain during her life] And that neither he the sd (D.) his hrs exs or ads or any or. psn or psns lfully claiming or to claim by from or under him them or any of them shall and will at any time hrafr make do exte commit or wittingly or willingly suffer any act matter deed or thing whatsr whby the exon or performance of the trusts hby created and decld shall or may be defeated hindered prevented or in anywise retarded or delayed but on the contrary shall and will from time to time and at all times hrafr at the request of the sd trustees or the trustee for the time being or any purchaser or purchasers mtgee or mtgees make exte do and perform or cause or procure to be made done exted and performed or join with the trustee or trustees for the time being in making and exting all and evy such furr and or. lful and reasone act and acts deed and deeds conveyances surrends and assances in the law matters and things whatsr for the furr better and more perfectly granting conveying surrendg and assurg of all and singr the preses above-mentd to be hby reld and covtd to be surrendd as afd with their and evy of their rights members and apts unto and to the use of the sd

(*trustees*) their hrs and ass upon the trusts and for the intents and purps hnbefe mentd and decl'd of and concerning the same and for the furr enabling them the sd (*trustees*) and the survor &c. to exte and perform the sd trusts so hby reposed in them according to the true intent and meaning of these prests and for the grantg conveyg surrendg and assg such pts of the sd freehd or copyhd heredit's as shall be so sold with the apts thereto belonging unto and to the use and behoof of the purchaser or purchasers thof his her or their hrs or ass and for grantg conveyg surrendg and assrg such pts of the sd freehd and copyhd heredit's as shall be mtgd unto the mtgee or mtgees his her or their hrs exs or ads as by the sd (*trustees*) or the survors or survor of them or the hrs exs or ads of such survor or of any purchaser or purchasers mtgee or mtgees of the sd preses or any pt thof or any of them or their or any of their counsel shall be rsonly devised advised and required *Provided always* and it is hby agrd and decl'd by and betn all the sd pties to these prests that the sd (*trustees*) their hrs exs or ads shall each of them be charged and chargeable only for such mos as they shall resply actually rece by virtue of these prests and that the one of them shall not be answe or accte for the or. or ors of them or for the acts deeds rect's neglects or defts of the or. or ors of them but each of them for his own acts deeds rect's neglects or defts only And that they or any of them shall not be answe or accte for any loss or damage which may happen by the failure of any banker or goldsmith in whose custody any of the trust mos may be placed or of any psn or psns who may be employed to rece the rents issues and prfts of the sd preses *And also* that it shall and may be lful to and for the sd (*trustees*) and the survors &c. and each and evy of them in the first place by and out of the rents issues and prfts of the sd heredit's and preses and the mos to arise by the sale thof to deduct and reimburse themselves resply and also to allow to each or. all such losses costs chas and exps as they any or either of them shall or may at any time or times pay sustain expend or be put unto for or by reason of the trusts hby in them reposed or the management or exon thof or any thing relative thereto and also to pay or allow to any psn or psns who shall be apptd to rece the rents issues and prfts of the sd preses or any of them such salary or

No. CCCLI.
*Conveyance in
Trust to sell.*

Indemnity to
trustees.



Sa. CCCLL
Conveyance in
Trust to all.

Appointment of
new trustees.

salaries or sum or sums of money as they the sd trustees or the survivors or survivor of them or the hrs or ass of such survivor shall think proper *Provided also* and it is likewise hby furr dectd and agrd by and between the sd pties to these prests and it is the true intent and meaning of them and of these prests that if the sd (*trustees*) the trustees hnbefe named or any of them or any or. trustee or trustees to be elected and apptd as hnafr mentd shall happen to die or be minded or desirous to quit and be discharged from the trusts hby in them reposed as afd or shall refuse or neglect to act in the same at any time or times before such trusts shall be fully exted and performed then and in evy such case and from time to time and when and so often as the same shall happen it shall and may be lful to and for the sd (*trustees*) or the survivors or survivor of them or the hrs exs and ads of such survivor or of any such trustee or trustees hrafr to be apptd as afd [by and with the consent and approbation of the sd (*D.*) his hrs or ass signified by writing under his her or their hand or hands] by any writing or writings under the hands and seals or hand and seal of them the sd (*trustees*) or the survivors &c. attested by two or more credible witnesses to elect nominate and appt some or. fit and proper psn or psns to be a trustee or trustees for the purps afd in the place and stead of him or them who shall so happen to die or be desirous to quit and be discharged from the sd trusts or who shall refuse or neglect to act in the same and so from time to time as often as there shall be occasion to nominate substitute or appt any or. psn or psns to be trustee or trustees in the room and stead of the then or any succeeding or or. trustee or trustees who shall happen to die or be desirous to quit and be discharged from the trusts afd or shall refuse or neglect to act in the same *And* that when and so often as any such new or or. trustee or trustees shall be nominated and apptd all and evy the freehd and copyhd manors messes &c. and heredts hnbefe mentd and hby granted and reld and covted to be surrendered or intended so to be or so much thof as shall not have been sold or disposed of for the purps afd or any of them and the equity of redemption of such pt or pts thof as shall be mtged and also all the trust money recd by the sale or sales mtge or mtges of any pt of the sd heredts and preses which shall not have been expended or applied in the exon of

the sd trusts afd (if any such there be) shall be thereupon with all convenient speed resply convd surrendd and assd in such manner as that the same shall be lfully and effectually vested in the jt names of the survg or contg trustee or trustees and of such psn or psns as shall be elected and apptd to be a trustee or trustees and their hrs upon the trusts afd *And* evy such convce surrder and assnmt shall be decld to be upon the same trusts and to and for the same uses ends intents and purps as are in and by these prests expssd and decld of and concerning the sd preses and the money to arise by such sale or sales mtge or mtges thof or of any pt thof or such of the sd trusts as shall be then subsisting and undetermined and capable of taking effect *And* all and evy such new trustee or trustees so to be apptd by virtue of this power shall and may from thenceforth act in the management and exon of the sevl trusts afd as fully and effectually in all respects as if he and they had been originally apptd a trustee or trustees by these prests anything herein contd to the contrary thof in anywise notwithstanding *In witness &c. see ante, No. XLVI.*

No. CCCLI.
*Conveyance in
Trust to sell.*

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No. CCCLII.

*Assignment of Stock in Trade, Debts and Effects of Copartners
for the Benefit of Creditors. (General Precedent.)*

No. CCCLII.
*Assignment by
Copartners in
Trust for
Creditors.*

Obs. As to the validity of such an assignment, see Pref. s. 9; and as to the stamp, see s. 11.

This Indre made &c. see ante, No. LXXXV. Betn A. and B. of &c. carrying on trade in coptship under the firm of A. and B. of the first pt (*trustees*) crs of the sd (*copartners*) named and apptd for the bent of the jt and separate crs of the sd A. and B. of the second pt and the sevl or. psns jt and separate crs of the sd A. and B. whose names and seals are hereunto set and affixed of the third pt *Whas* the sd A. and B. have for sevl yrs past carried on the trade or business of merchants under the firm of A. and B. and in the course of their dealings have become and now stand indebted on their jt acct to the sevl psns and in the sevl sums set opposite to their respive names in the first schedule hereunder written *And whas* the sd A. is indebted on his

No. CCCLII.
Assignment by
Copartners in
Trust for
Creditors.

own separate account to the sevl psns pties to these presents of the third pt in the sevl sums set opposite to their respive names in the second schedule hereunder written *And whas* the sd B. is indebted to the sevl psns pties hereto of the third pt in the sevl sums set opposite to their respive names in the third schedule hereunder written *And whas* the capital stock or property of the sd A. and B. belonging to them on their jt acct consists of a certain messe warehouses and preses situate at and demised to them the sd A. and B. by a certain indre of lease bearing date the &c. for a term of yrs And also of divers goods merchandise vessels bonds bills and or. secties debts and effects *And whas* the separate property of the sd A. consists of sundry household goods furniture china plate linen and also sevl policies of insurance *And whas* the separate property of the sd B. consists of &c. (*here state it*) *And whas* the sd A. and B. are unable to pay and satisfy to evy their jt and separate crs the whole of their respive demands but in order to render them the utmost satisfaction in their power have agrd and proposed to convey and assign all and singr the este property debts and effects belonging to them as well on their jt as on their separate acct in trust for themselves and the rest of their crs rateably in such manner as the same jt and separate este would be distributable under a fiat of bankruptcy *And whas* the sd (*creditors*) considering the present situation of the affairs of the sd A. and B. have consented to accept the offer of the sd A. and B. subject to the provos and agrts hnaft mentd and decld *Now this Indre witnesseth* That in pursuance of the sd agrt and in conson of 5s. to the sd A. and B. in hand pd by the sd (T.) the rect of which is hby acknged They the sd A. and B. by and with the consent(a) of the sd (C.) pties hereto testified by their signing and sealing these prests *Have* and each of them *Hath* granted bargained sold and assd and by these prests do and each of them doth grant &c. unto the sd (T.) *All that* messe or tent warehouses and preses comprised in the sd in pt recited indre of &c. togr with the sd indre of lease and all the rents issues profits bent and advantage to arise therefrom And all and singr the vessels merchandize stock in trade chattels debts and effects

(a) As to the necessity of this consent, see Pref. s. 9.

of them the sd A. and B. whatsr and wheresoever And also all and evy the bills notes bonds policies of insurance and or. secties And all or. the property and effects of them the sd A. and B. or either of them of what nature or kind soever and wheresoever situate and being and in whosesoever hands custody or power the same or any of them or any pt or pts theof now are or at any time hraft may be with their and evy of their apts And all the este title int claim and demand whatsr of them the sd A. and B. or either of them as well jtly as separately of to in or out of the same preses and any of them resply the wearing apparel of themselves and families excepted *To Have* hold rece and take the sd messe or tent warehouses vessels merchandize stock in trade chattels debts &c. and all and singr or. the premises hby assd or intended so to be upon the trusts and to and for the ends intents and purps hnaft mentd that is to say That they the sd (T.) and the survors or survivor of them or the exs ads or ass of such survivor shall and do with all convenient speed sell and dispose of the sd messe warehouses and preses vessels merchandize stock in trade chattels and all and singr such pts of the jt and separate este property and effects of the sd A. and B. as are saleable for such price or prices as can be reasony gotten for the same And shall and do by all such lful ways and means as in their discretion they shall think proper get in and rece the sevl debts or sums of money and all or. the preses hby assd or intended so to be *And upon this furr trust* that they shall stand possessed of or interested in all the mos to arise from or by the sale of the sd messe warehouses and all or. the preses hby assd and hnbefe directed to be sold and also of and in all and singr the mos which shall be recd for or in respect of the prfts thof until the sale thof and which shall be collected got in and arise from the sd jt and separate este of the sd A. and B. upon the trusts and to and for the intents and purps hnafter expssd of and concerning the same that is to say *Upon Trust* in the first place to retain and reimburse themselves all costs chas and exps of preparing and making such sales resply and attending the recovery and getting in the sd rents debts and or. trust mos togr with commission and allowances usual among merchants (or among merchants trading to and from &c. as

No. CCCLII.
Assignment by
Copartners in
Trust for
Creditors.



No. CCCLII.
*Assignment by
Copartners in
Trust for
Creditors.*

To allow each
of the debtors
an annual sum
for years.

To discharge
joint and sepa-
rate debts.

Surplus to
debtors.

Distinct ac-
counts to be
kept of the joint
and separate
estate.

*the case may be) And also to pay all salaries and allowances to be made to clerks agents and subordinates And in the next place that they do and shall by and out of the sd trust mos pay and allow to the sd A. for the term of two yrs to be computed from the day of next ensuing if he shd so long live for the support of himself and his family a yrly sum not exceeding £ And in like manner do and shall allow to the sd B. a yrly sum not exceeding £ And in the last place do and shall pay and apply the sd trust mos in and towards satisfaction and discharge of the sevl debts due and owing to the sevl jt and separate crs of the sd A. and B. or either of them pties hereto of the second and third pts their respive exs &c. or so much of the same debts or sums of money as the sd trust mos shall extend to pay (nevss the same to be in full satisfaction of their sevl debts or sums of money) And in case there shall remain or be any surplus of the jt and separate este of the sd A. and B. after all such paymts and distributions as afd *Then upon Trust* to pay and divide the same to and betn the sd A. and B. their exs ads and ass resply in proportion and according to their respive rights and ints therein and thereto *Provided always* and these prests are upon this express condition that distinct and separate accts shall be kept of the jt and separate estes and effects of the sd A. and B. as well real as psnl and that what shall be found to belong to their sd separate este or estes shall be applied in the first place in and towards satisfaction of the debts of their respive separate crs rateably and in proportion to the sums set to their respive names in the schedule hereunder witten or hereunto annexed And in case there shall be any surplus of their jt este after all their sd jt crs shall be pd and satisfied the amount of their whole demands then that the share and shares int and ints in such overplus of them the sd A. and B. whose estes shall have been is or are to be applied as afd shall be carried to the acct of his or their separate este or estes and be applied in or towards satisfaction of his or their separate debts And if there shall be any surplus of the separate este or estes after all their separate crs shall have been pd and satisfied their whole demands then that the overplus of such separate este or estes shall be carried to the acct of their jt este*

and be applied in or towards satisfaction of the sd jt debts (a) *And it is hby decl'd* and agr'd by and betn the pties hereto that the rectx of the sd (T.) and the survors &c. shall be valid discharges to the psn to whom the same shall be given And that it shall and may be lful to and for the sd (T.) to sell and dispose of the sd jt and separate este and effects of the sd A. and

No. CCCLII.
*Assignment by
Copartners in
Trust for
Creditors.*

(a) Instead of assigning the joint and separate estates under one witnessing part, it may, sometimes, be most convenient to assign, first, the joint estate, and afterwards the separate estate of each debtor, by distinct witnessing parts: in that case say, "*Now this Indre witnesseth* That &c. in pursuance &c. and in conson &c. They the sd A. and B. have &c. bargained &c. unto the sd (T.) &c. *All that* &c. And all and singr the vessels &c. And all or. the jt property este and effects of them the sd A. and B. To have &c. unto the sd (T.) and their &c. the sd messe &c. Upon the trusts &c. That they the sd (T.) &c. shall and do sell &c. the sd messe &c. and all such or. pts of the jt este &c. as are saleable &c. And shall and do by such lawful means &c. get in &c. *And upon this furr trust* that they shall stand possessed of &c. Upon the trusts &c. In the first place to retain &c. costs &c. *And in the next place* to pay salaries &c. *And in the next place* to allow annuities to A. and B. *And lastly* do and shall pay and apply the sd trust mos in and towards satisfaction &c. of the sevl debts due to the jt crs of the sd A. and B. pties hereto of the second and third pts And in case there shall remain and be any surplus of the jt este of the sd A. and B. *Then in trust* to stand possessed of &c. one moiety of such surplus in aid and augmentation of the separate este of the sd A. And in the or. moiety of the same surplus in aid of the separate este of the sd B. *And this Indre furr witnesseth* (assignment of A.'s separate property) And it is hby decl'd and agr'd that the sd (T.) and the survors &c. shall stand possessed of and interested in the mos to arise by the sale of the sd separate este and effects of the sd A. hby ass'd or intended so to be and of the mos to be recd for or on acct of the rents and profits thof in the mean time until such sale or sales and also of all mos to be recd and produced by and from all the preses lastly hby ass'd or ment'd or intended so to be after paying all costs chas &c. upon the trusts following that is to say *In Trust* by and out of such mos from time to time to pay and satisfy the sevl sums of money requisite for continuing or keeping on foot the sevl policies of insurance hnbefe expsd to be hby ass'd *And* in the next place to pay and statisfy the separate debts of the sd A. due and owing to the sevl separate crs of the sd A. of the third pt or so much of the same &c. *And* in case there shall be any surplus of the sd trust mos produced by or arising from the separate este of the sd A. after such payments and distribution as afd *Then in trust* to stand possessed of and interested in such surplus mos upon such trusts as are hnbefe decl'd for the bent of the jt crs of the sd A. and B. of and concerning their jt stock capital and property *And lastly in trust* to pay the ultimate surplus if (any) arising or to be produced by or from the separate este of the sd A. after full paymt and satisfaction of the sevl debts due and owing to the separate and jt crs pties hereto of the second and third pts unto the sd A. his exs and ads *And this Indre furr witnesseth* (assignment of B.'s separate property) *And it is hby decl'd* &c. (the same trusts as before) *And it is hby furr decl'd* and agr'd" &c. see above.

Assignment of
A.'s private
estate.

Assignment of
B.'s private
property.

No. CCCLII.
*Assignment by
 Copartners in
 Trust for
 Creditors.*

Indemnity to
 trustees.

Power of at-
 torney.

B. hby assd or intended so to be manner as they shall think fit an or cause to be made insurances of he or they shall think proper and premium or premiums of such ins furr that they the sd (T.) and t chargbe or accble for any more than what he or they shall actu prests nor liable to make good lo management sale or disposal of the assd witht the wilful neglect or c the survors &c. And the better t survors &c. to recover and rece all parate este and effects now due or or either of them They the sd A. a sd sevl crs pties hereto of the thir Hath made constituted &c. and l Doth make &c. the sd (T.) and th and atties irrevocable in their or ei stead but to and for the uses and recover and rece of and from the schedules mentd who are indebted of the sd A. and B. or either of the evy the goods wares and merchand preses hby assd And upon receip tances reles and such or. discharg nonpayment thof to prosecute all and means as to them shall seen adjust or make composition or agrt thof by arbitration or orwise howsr all and evy or. acct or accts with the preses and generally to do perfi and things necssy and fit to be do fully and effectually to all intents and B. or either of them might ha and these prests had not been m atties under them or him the sd (for the time being to constitute an and also the sd (C.) and each of

confirming all and whatsr they the sd (T.) or the survors, &c. shall or may lfully do in and about the same And the sd A. and B. for themselves sevlly and resply and for their sevl and respive hrs exs and ads do hby covt &c. with and to the sd (T.) and (C.) pties hereto of the second and third pts in manner following that is to say That for and notwithstanding any act matter or thing done committed or suffered by them the sd A. and B. or either of them the sd hnbefe recited lease is a good and valid lease and that the sd debts mentd in the sd schedules hereunder written or orwise expressed to be due and owing to the sd A. and B. by or from the sevl psns therein named are now well and truly due and owing and subsisting And that they the sd A. and B. or either of them or any or. psn or psns for their use or by their order have or hath not at any time or times heretofore assd incumbd recd reld or discharged all or any pt of the hby assd goods wares merchandizes debts or effects And that they or either of them shall or will not witht the consent of the sd (T.) or the survors &c. assign incumber rece rele or discharge the same or any pt thof And also that they shall and will not revoke the authty hby given nor disown rele or discontinue any action or suit to be bt or commenced pursuant thereto nor do or suffer any act whby or by reason whof the sd (T.) or the survors &c. shall or may be hindred or prevented in or from recovg or regg all or any of the goods wares merchandizes debts or sums of money or or. the preses hby assd or any pt thof And furr that they the sd A. and B. and each of them their and each of their hrs exs and ads shall and will upon evy reasone request of the sd (T.) or the trustee or trustees for the time being attend him or them at such time or times place or places as they shall require and then and there aid and assist in stating and making out all such accts as relate to or concern the sd trust este and preses hby assd And also shall and will from time to time and at all times at the request costs and chas of the sd crs pties hereto or the major pt of them make do and perform and exte any furr or or. reasone act matter or thing whatsr for the rati-fying and confirming these prests and for the better more perfectly and satisfactorily assrg and assigng the preses hnbefe assd or intended so to be unto the sd (T.) or the survors &c. or for the more perfectly enabling them the sd (T.) or the survors

No. CCCLII.
*Assignment by
Copartners in
Trust for
Creditors.*

Covenants from
debtors.

Lease valid.

Debts subsist-
ing.

Not to revoke
the power of
attorney.

To assist trus-
tees.

Further as-
surance.

No. CCCLII.
Assignment by
Copartners in
Trust for
Creditors.

To assign debts
omitted in
schedules.

Covenant from
trustees.

Release from
creditors.

&c. to recover get in and rece the same and evy or any pt thof to and for the uses and purps afd *And* that in case any debt or debts or sum or sums of money now due and owing unto them the sd A. and B. or either of them is or are omitted to be mentd in the sd schedules hereunder written they the sd A. and B. or either of them shall and will hrafr on request made to him or them transfer and assign all and evy such debt or debts sum or sums of money unto the sd (T.) or the survors &c. or the trustee or trustees for the time being *And it is hby decld* and agrd &c. (*appointment of new trustees, see ante, Trust Deed, No. CCCLI.*) And the sd (T.) for themselves sevlly and resply and for their sevl and respive exs and ads and not the one for the or. of them or for the exs ads acts deeds and defts of the ors of them do hby covt and declare to and with the sd (C.) pties hereto of the third pt that they do accept the trusts hby in them reposed and shall and will honestly and truly exte the same to the best of their power and shall and will at the request of the sd (C.) pties hereto or the major pt of them acct with them touching the trust este and shall and will make a faithful distribution of all and evy such sum and sums of money as they shall rece by virtue of these prests after such deductions as are hnbefe mentd unto and amongst the sevl jt and separate crs of the sd A. and B. according to their respive rights and ints and the true intent and meaning of these prests such cr or crs first making affidavit or affirmation of his or their respive debts before one of the masters of the High Ct of Chancery *And this Indre furr witnesseth* That in conson of the preses they the sd sevl (C.) pties hereto of the second and third pts have for themselves sevlly and resply and for their sevl and respive exs ads ptnrs and ass remised released and for ever quit claimed and by these prests *Do* and each of them *Doth* remise rele and quit claim the sd A. and B. and each of them their and each of their hrs &c. of and from all and all manner of actions and causes of action suits debts sum and sums of money claims and demands whatsr at law or in equity which agst them the sd A. and B. or either of them they the sd (C.) now have or ever had or are intitld unto or shall or may have claim challenge or demand agst them or either of them their or either of their hrs &c. for or in respect or by reason or means of any act matter cause or

thing whatsr from the beginning of the world unto the day next before the date of these prests *Provided always* and it is hby agrd and decl'd by and betn the pties hereto and it is the true intent and meaning of them and these prests that in case the sd crs pties hereto or any of them shall from time to time or at any time hrafter either by the confession of the sd A. and B. or either of them or orwise howsr make appear or prove that the sd A. and B. or either of them was or were possessed of interested in or intitld unto any or. goods debts effects or este (their wearing apparel excepted) to the amount of £ or upwards besides what are mentd or referred to in the sd schedules hereunder written that then the sd A. and B. or either of them their or either of their exs or ads shall have no bent or advantage whatsr from or by these prests or from or by any rele or reles to them or either of them given or agrd to be given by their sd crs or any of them but the rele hby given and all the covts and agrts herein contd shall in such case be absolutely void to all intents and purps anything hnbefe contd to the contrary thof in anywise notwithstanding *Provided also* and it is hby furr decl'd and agrd by and betn the parties to these prests that if all the crs of the sd A. and B. or either of them shall not come in and exte these prests within the space of months from the day of the date of these prests that then such cr or crs so neglecting or refusing to exte the same shall not be intitld to any distribution bent or advantage whatsr by virtue of these prests but be therefrom absolutely excluded and in such case the pt or pts proportion or proportions of the preses hby assd or the produce thof which such cr or crs would be intitld to have or rece by virtue of these prests shall be pd over into the proper hands of the sd A. and B. or either of them their or either of their exs or ads or to such psn or psns as they shall appt in that behalf

In witness &c. see ante, No. XLVI.

Schedules.

- I. Joint and separate debts of A. and B.
- II. Separate debts of A.
- III. Separate debts of B.

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No. CCCLII.
*Assignment by
Copartners in
Trust for
Creditors.*

Proviso as to
concealment
by debtors.

Proviso as to
creditors not
executing the
deed of assign-
ment.

No. CCCLIII.
Conveyance, &c.
Short Form.

No. CCCLIII.

*Conveyance of real, and Assignment of personal, Property
 Trust for the Benefit of Creditors. (Short Form.)*

Obs. As to the validity of such a deed, see Pref. sect. 9; and as to the stamp, see sect. II.

This Indre made &c. see *ante*, No. LXXXV. Betw (debt
 of &c. of the one pt and trustees) of &c. of the or. pt W
recite title to certain real estates And *whas* (recite title to cert
personal property) And *whas* the sd (D.) stands justly indebted
 unto the sd T. and also divers or. psons in various sums
 money amounting in the whole to £ or thereabouts wh
 on account of losses and or. misfortunes he is unable to p
 And *whas* the sd D. hath proposed to convey and assign o
 unto the sd T. all his real and psonal este and effects whate
 manner and for the purps hereafter mentd Now *this Indre* w
 witnesseth That in pursuance of the sd agmt and in conson of l
 &c. to the sd D. by the sd (T.) in hand &c. pd the rect
 He the sd D. *Hath* granted bargained sold aliened reld app
 granted and by &c. *Dech* grant &c. unto the sd (T.) and to th
 hrs and use All that messes or tent &c. and all that piece
 parcel of li &c. *parcels* And all houses &c. And all the e
 &c. *T. Here and in* *Hath* the sd messe &c. upon the trusts a
 for the intents and purps hereafter decld And *this Indre* fi
 witnesseth That in conson of &c. to the sd (D.) by the sd (T.)
 in &c. pd the rect &c. He the sd (D.) *Hath* bargained sold a
 assed and by these prests *Dech* &c. bargain &c. unto the sd (T.)
 their exe &c. all and singr the farming stock (a) implements
 husbandry household goods chattels furniture debts and effe
 whate and of what nature or kind soever as are now due a
 belonging to the sd (D.) and all the este right and int of hi
 the sd D. of in and to the sd last mentd preses To *Have* H
 rece and take the sd farming stock &c. and all and singr or. t
 preses liby lastly assed unto the sd (T.) or the survivor &c. fro

a. It has been decided that in an assignment made for the benefit of credit
 by a trader and farmer, words "effects, stock, books, and book debts" w
 convey cattle on the farm. *Lewis v. Rogers*, 1 C. M. & R. 48.

henceforth upon the trusts and for the purps hnafttr mentd and contd And it is hby decld that the rele and conveye hnbefe made of the sd freehd messe &c. and the assnmt hnbefe made to the sd (*T.*) their exs &c. of the farming stock &c. is made to them the sd (*T.*) their hrs exs ads and ass upon trust that they the sd (*T.*) or the survor of them and the hrs &c. of such survor do and shall as soon as conveniently may be after the date and exon of these prests of his or their own authty and witht the concurrence of the sd (*D.*) his hrs exs or ads or any or. power or authty of him the sd (*D.*) than is herein contd unless the same be required by any purchaser or purchasers make sale and absolutely dispose of the sd messe pce and parcel of land farming stock implements &c. and or. effects hnbefe mentd and described and intended to be hby reld and assd with their and evy of their apts either togr or in lots and either by public auction or private contract for the best price or prices that at the time or respective times of such sale or sales can be reasony had or obtained for the same to such psn or psns as shall be willing to become the purchaser or purchasers thof And do and shall stand possessed of and be interested in the mos to arise or be produced by such sale or sales upon the trusts and for the intents and purps hnafttr mentd expssd and decld of and concerning the same And it is hby decld and agrd by and betn the pties hereto that the sd (*T.*) and the survor of them &c. do and shall for the purps afd make and exte all such contracts covts agrts and conveys deeds and assurs as they shall think fit and that the same shall to all intents and purps be as good and effectual in the law [though the sd (*D.*) should not join therein] as if he the sd (*D.*) had duly exted the same And that the psn or psns his her or their ass to whom the sd (*T.*) or the survors &c. shall convey the sd heredts and preses or any pt thof as afd shall notwithstanding the sd (*D.*) his hrs or ass shall not join therein or assent thereunto be intitld unto and have hold and enjoy the same agst the sd (*D.*) his hrs and ass and all and evy psn claiming and to claim by through under or in trust for him or them And *furr* that the rect and rects of the sd (*T.*) or the survor shall be good and sufficient dischs to any purchaser or purchasers resply of the sd heredts and preses for his her or their purchase money or so much thof resply as in such rect or rects shall be expssd to be

No. CCCLIII.
Conveyance, &c.
(Short Form.)

Contract of
trustees valid
without debtor's
concurrence.

Receipt valid
discharges.

No. CCCLIII.
Conveyance, &c.
(Short Form.)

Power of attorney.

recd and that the psn &c. obtaining such rect or rects &c. And for the better enabling the sd (T.) and the survor of them to recover and get in and rece all and evy the este and effects now due and owing to the sd (D.) he the sd (D.) hath constituted &c. (see *ante*, No. CLIII.) *And it is hby furr expssly declrd and agrd* by and betn the pties to these prests that the sd (T.) and the survor &c. shall stand possessed of and interested in the sd mos to arise by the sale or sales of the sd hereditis and preses and of the farming stock &c. hnbefe reld conveyed and assd or intended so to be and the rents issues and profits of the sd messe and preses in the mean time until such sale or sales shall be made and all or. mos which the sd (T.) or the survor &c. shall rece by virtue of these prests upon the trusts and for the intents and purps hnaft limited expssd and declrd that is to say *Upon Trust* in the first place to pay unto E. F. of &c. G. H. of &c. I. K. of &c. such sum and sums of money as shall be due and owing to each of them under and by virtue of certain mortgages upon the hnbefe mentd freehd preses exted by the sd (D.) to each of them the sd E. F. G. H. and I. K. resply and from and after full paymt thof then *upon trust* out of the same mos and preses after deducting and retaining all costs chas and exps which he or they or any of them shall sustain expend or be put unto in and about the exon of the sd trusts to pay and apply the residue to and amongst themselves and all or. the crs of the sd (D.) who shall make due proof of their debts if required and shall on or before the day apptd for that purpe (of which notice shall be given by advertisement in the London Gazette and in newspapers) agree to accept the same in full of their respive debts and give a rect in full for the same accordingly And in case there shall chance to be any ultimate residue or surplus of such money *Then in trust* to pay the same to the sd (D.) his exs ads or ass or such psn or psns as he or they shall appt And the sd (D.) for himself &c. (*covenants for title*, see *Conveyance in Trust for Creditors*, No. CCCXLIX.) *In witness &c.* see *ante*, No. XLVI.

No. CCCLIV.

*Assignment of the Effects of a Debtor (not being a Trader)
in Trust to pay his Debts.*

No. CCCLIV.

*Assignment by
one not a Trader
to pay Debts.*

Obs. As to the validity of a deed of this kind, see Pref. sect. 9;
and as to the stamp, see sect. 11.

This Indre made &c. see ante, No. XLVI. Betn (D.) of &c. esq. of the one pt and (T.) of &c. of the or. pt Whas (recite debts as mentd in first schedule, see former precedents) Now this Indre witnesseth That in order to secure the paymt of the sd sevl and respive debts so due and owing from him the sd (D.) to his sevl crs and in conson of 5s. &c. He the sd (D.) *Hath* bargained sold assd transferred and set over and by these prests *Doth* &c. unto the sd (T.) all and evy the sevl and respive sum and sums of money arrears of rent and money due and owing to the sd (D.) on acct of salary or on any or. acct whatsr parlarly mentd in the second schedule hereunto annexed and all prfts bent advantage costs and chas arising and to be recovered for or on acct of the sd sevl debts sum and sums of money arrears of rent salary and or. things and all the este &c. of him the sd (D.) in to and out of the same and evy pt and pcl thof *To Have Hold* take and rece the sd sevl debts sum or sums of money arrears of rent and salary and or. things hby bargained sold and assd or intended so to be and evy pt and pcl thof unto the sd (T.) or the survors and survivor of them or the exs ads or ass of such survivor *In Trust* and to and for the sevl uses and purps following that is to say That they the sd (T.) or the survors, &c. do immly after the exon of these prests by their letter of atty under their hands and seals authorize and empower W. T. of &c. and S. A. of &c. or any or. psn or psns as the sd (D.) shall from time to time make choice of and direct to get in and rece of and from the sevl tenants and or. psn and psns whose names and sums are mentd and expssd in the sd second schedule hereunto annexed all and evy the arrears of rent and salary and or. sum and sums of money now due and owing to the sd (D.) And that the sd W. T. and S. A. do immly on rect thof or of any pt or pcl thof pay the same into the hands of A. B. and C. D. of &c. bankers in the names and for and on acct of the sd (T.)

No. CCCLIV.
Assignment by
one not a Trader
to pay Debts.

Annual allow-
ance to the
debtor.

To pay creditor.

Power of at-
torney.

And upon this furr trust and confidence that they the sd (T.) and the survors &c. do pay the same unto the sevl psns and on the sevl acct's and in manner and form hnaft'r mentd of and concerning the same that is to say That they do pay the sum of £ to the sd (D.) himself for one quarter of the annual paymt of £ which he hath set apart and reserved for himself for his subsistence until the day of next ensuing out of the sd arrears and also out of the growing prfts of his real and personal este hby assd *And* also that they do pay to the sd (D.) the furr sum of £ or. pt thof for another quarter of the sd sum of £ so reserved as afd from the day of to the day of next *And* also the further sum of £ for another quarter of &c. from the day of to the day of next *And* also the further sum of £ for anor quarter of the the sum of £ from the day of which shall be in the yr if he shall so desire *And* from and immly after paymt of the sd four sevl sums of £ to the sd (D.) *Then upon this furr Trust* and confidence that they the sd (T.) and the survors &c. do pay the remr of such sums of money as shall be gotten in and recd by them or their order out of or on acct of the preses hby assd or any pt or pcl thof unto and amongst the sevl crs of the sd (D.) whose names are mentd and set forth in the sd second schedule hereunto annexed in such manner and form as the sd (D.) by and with the approbation of the sd (T.) testified by their or one of them signing such orders of the sd (D.) shall from time to time direct them under his hand so to do until all the sd crs are fully pd and satisfied their respive debts and such chas as the sd (T.) and the sd W. T. and S. A. or any or. psn or psns that shall be employed under them shall have necessarily been at or put unto in and about the exon of the present trust are also fully pd and discharged *And then in Trust* and to and for the use and bent of the sd (D.) his exs ads and ass and to and for no or. use intent or purpe whatsr *And* for the better enabling the sd (T.) or such or. psn or psns as shall be employed by them to recover and rece the sd debts and sum and sums of money arrears of rent and salary and all or. the preses hby assd he the sd (D.) Hath constituted and by these prests Doth &c. the sd (T.) and the survors &c. his true and lful atties irrevocable for him and in his name but to and

for the proper use and behoof of the sd (T.) and the survivors &c. in trust as afd to ask demand sue for recover and rece the sd hby assd preses and evy pt and pcl thof and on rect thof or of any pt or pcl thof to give any rects acquittances reles or or. dischas as the case shall require and also to compound arbitrate agree settle commence or defend actions or suits conclude determine and generally to make do and exte all and evy or. act matter or thing whatsr in and about the preses which shall be requisite and needful to be made or done as fully and amply in evy respect as the sd (D.) might or could do if he were personally present and also to authorize constitute and appt one or more atty or atties under them And the sd (D.) doth hby ratify and confirm all and whatsr the sd (T.) shall lfully do or cause to be done in and about the preses by virtue of these prests And the sd (D.) for himself his exs and ads doth hby covt &c. with and to the sd (T.) and the survivors &c. in manner following that is to say that he the sd (D.) his exs ads or ass or any of them shall not nor will at any time or times hrafr take rece rele or discharge the sd debts or or. the preses hby assd or any of them or any pt or pcl thof witht the consent in writing of the sd (T.) first had and obtained for that purpe and that he the sd (D.) shall and will at all times at the request of the sd (T.) but at the costs and chas in the law of the sd (D.) his exs or ads make do exte and suffer or cause to be made done exted and suffered all and evy such furr and or. acts deeds assnmts and assurs in the law whatsr for the better and more satisfactorily assurg the sd hby assd debts and or. the preses unto the sd (T.) and the survivors And for the enabling them to recover and rece the same in trust as afd And furr that the sd (D.) shall and will from time to time and at all times hrafr well and sufficiently save defend keep harmless and indemnified them the sd (T.) and the survivors &c. their and each of their goods and chattels lds and tents of from and agst all costs losses and dams which they or either of them shall or may suffer sustain or be put unto for and by reason or means of their or either of their acting in the sd trusts or intermeddling in any of the matters and things in or about the exon thof according to the directions afd And it is hby decld and agrd that the sd (T.) and the survivors &c. shall not be answere for the acts or deeds of the or.

No. CCCLIV.
Assignment by
one not a Trader
to pay Debts.

Covenants from
debtor.

Indemnity to
trustees.

Not to be an-
swerable for
each other.



No. CCCLIV.
*Assignment by
one not a Trader
to pay Debts.*

To reimburse
themselves.

of them or for the acts and deeds of the sd W. T. and S. A. or any or. psn or psns who shall be employed by the sd (T.) or for any sum or sums of money whatsr which are directed to be recd and pd by virtue of these prests but what shall actually come to the hands of them the sd (T.) and be actually received by them their joining in orders and rects (a) for the same notwithstanding And that it shall and may be lful to and for the sd (T.) and the survors &c. to deduct all and evy such costs and charges as they shall have been at or put unto or have incurred in or about the exon of this present trust out of the mos which shall have been gotten in by force hereof before they shall be compelled to re-assign the sd bargained and asssd preses or such pt thof as shall not have been disposed of by force hereof *In witness &c. see ante, No. XLVI.*

No. CCCLV.
*Assignment to
Two Creditors.*

No. CCCLV.

Assignment of Personal Estate to two Creditors upon Trust to sell for their Benefit.

Recital of debts.

Testatum.

This Indre made &c. Betn (debtor) of &c. of the one pt A. B. of &c. and C. D. of &c. two creditors of the sd (D.) of the or. pt Whas the sd (D.) is justly indebted to the sd A. B. in the sum of £ lent and advanced to him by the sd A. B. and unto the sd C. D. in the principal sum of £ togr with an arrear of int upon each of the sevl sums And whas for the purpe of repaying to the utmost of his ability the sd sevl sums of £ and £ togr with all arrears of int resply the sd (D.) hath agrd to make an assnmnt of all his este and effects in manner hnaft expssd Now &c. that for the purpose of raising money to pay off and dischge the sd sevl principal sums of £ and £ &c. so due and owing from the sd (D.) to the sd A. B. and C. D. togr with all arrears of int now due and owing from the same resply and in conson of the sum of 5s. of &c. to the sd (D.) in hand pd by the sd A. B. and C. D. the rect &c. He the sd (D.) hath bargd sold and asssd transferred and set over and by &c. unto the sd A. B. and C. D. All and singr his the sd (D.'s) household and

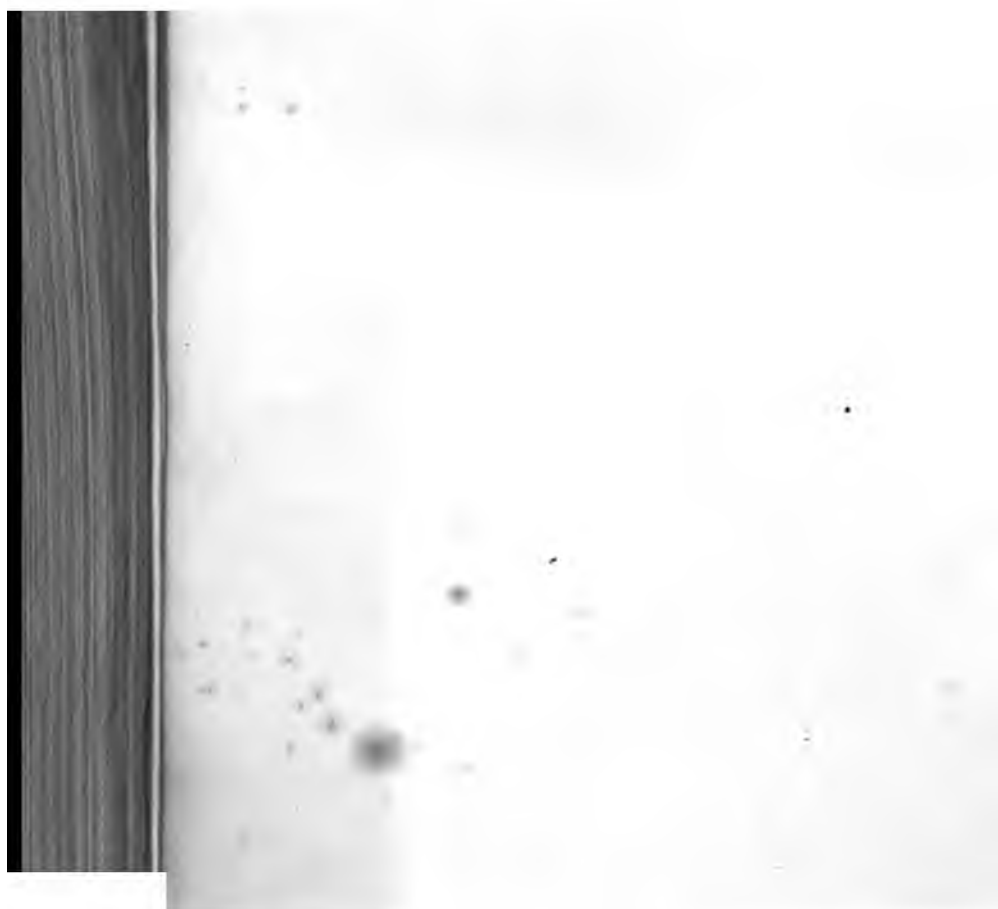
(a) As to this clause, see No. CCCXLIX. Pref. sect. 5, CONVEYANCES IN TRUST FOR CREDITORS.

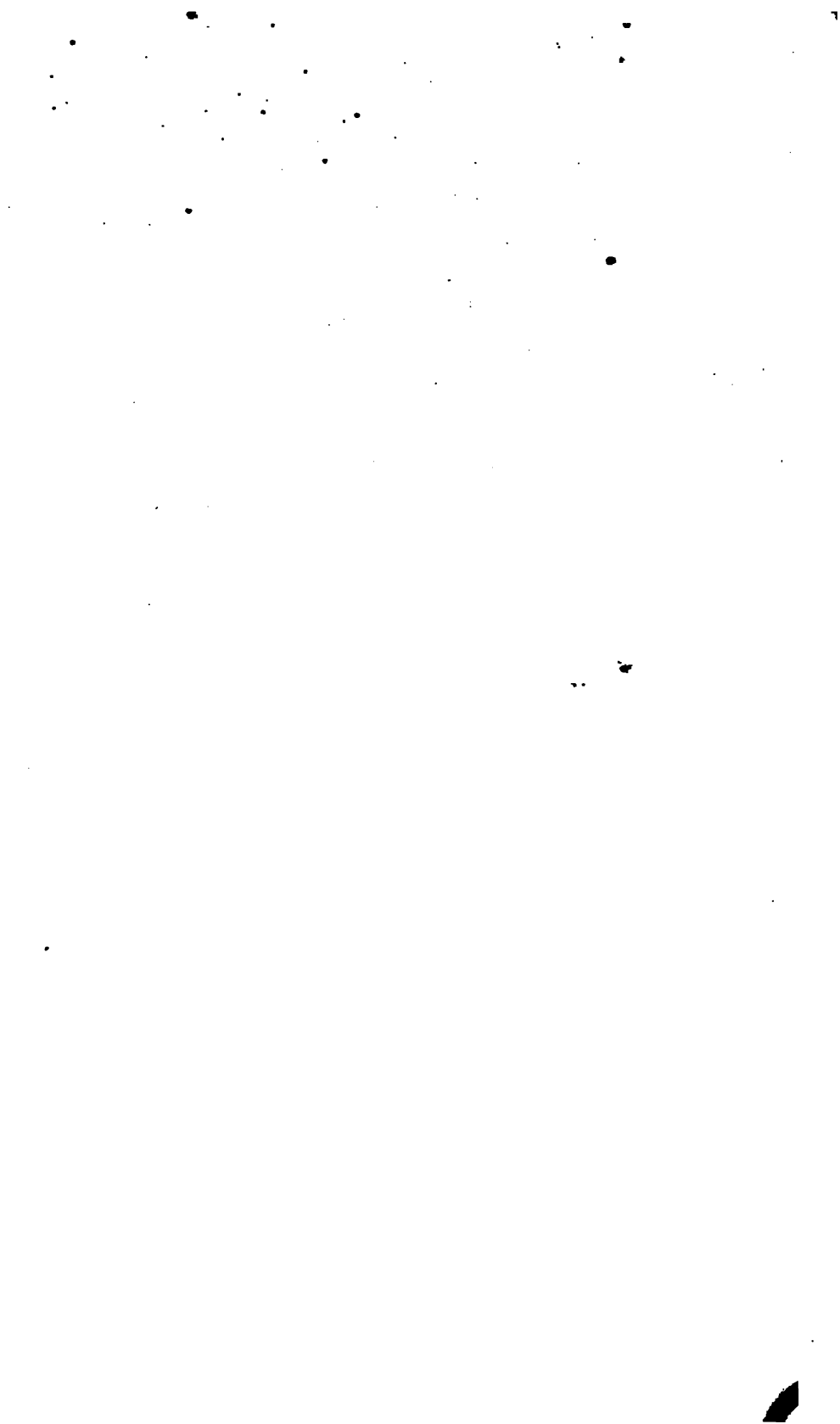
or. goods furniture cattle farming-stock chattels debts and psnl
 este and effects of every description now standing or being in or
 about the dwelling-house and lds situate at and now or late
 in the occupation of the sd (D.) And all the este &c. both at law
 and in equity of him the sd (D.) therein or thereto *To Have* No. CCCLV.
Assignment to
Two Creditors.
 receive and take the sd goods farming stock chattels and psnl
 este and effects and all and singr or. the preses hby assigned or
 intended so to be from henceforth unto the sd A. B. and C. D.
 their exs ads and ass absolutely *Upon the Trust* nevss and to and Habendum.
 for the intents and purps hnafr mentd that is to say *Upon Trust*
 that they the sd A. B. and C. D. do and shall forthwith witht
 any further interposition or assent of the sd (D.) by public auc-
 tion or private contract make sale and absolutely dispose of all Upon trust.
 and singr the goods chattels and preses hnbeft mentd and in-
 tended to be hby assd in such manner as the sd A. B. and C. D.
 think proper and for the best price or prices that can be reasbly
 obtained for the same *And upon this furr Trust* by and out of To make sale.
 the mos to arise by the sd sale to reimburse themselves and all
 psns employed by them all the exps as well of preparing and
 exting these prests as all or. consequent and incidental exps
 relating to the trust hnbeft mentd *And in the next place* to pay To pay ex-
pences.
 off and discharge first the sd principal sum of £ and all int
 thof so due and owing to the sd A. B. And then the sd principal
 sum of £ and all int thof respdy due and owing to the sd
 C. D. as afd *And lastly upon Trust* to pay the residue or surplus To discharge
debts.
 (if any) of the mos to arise by the sd sale unto the sd (D.) his
 exs ads or ass or to whom he or they may direct or appt And
 for the better enabling the sd A. B. and C. D. to recover and
 rece the sd goods &c. he the sd (D.) Hath made &c. (*Power of
 Attorney, see ante, No. CLIII.*) To pay surplus.

END OF VOL. I.



LONDON :
PRINTED BY C. ROWORTH AND SONS,
BELL YARD, TEMPLE BAR.









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